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BRAZIL:

1988 Constitution of the Federative Republic of Brazil

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1988 Constitution of the Federative Republic of Brazil

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[Text]

Preamble

We, the representatives of the Brazilian people, convened in National Constituent Assembly to institute a democratic state that is intended to ensure the exercise of individual and social rights, liberty, security, well-being, development, equality, and justice as supreme values in a fraternal and pluralist society that is without prejudices, is founded on social harmony, and is committed on the domestic and international scene, to the peaceful resolution of disputes, hereby promulgate, under the protection of God, the following Constitution of the Federative Republic of Brazil.

Title I - The Fundamental Principles

Article 1.

The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, is constituted as a democratic state of law upon the following premises:

- I. Sovereignty;
- II. Citizenship;
- III. The dignity of the human person;
- IV. The social values of labor and of free enterprise;
- V. Political pluralism.

Sole Paragraph. All power emanates from the people, who exercise it either through elected representatives or directly, pursuant to this Constitution.

Article 2.

The three branches of power of the Union, independent and harmonious among themselves, are the Legislative, the Executive, and the Judiciary.

Article 3.

The following constitute the fundamental purposes of the Federative Republic of Brazil:

- I. To build a free, just, and unified society;
- II. To ensure national development;
- III. To eradicate poverty and powerlessness and diminish social and regional inequalities;

IV. To promote the welfare of all, without regard to origin, race, sex, color, age, or any other forms of discrimination.

Article 4.

The Federative Republic of Brazil is governed in its international relations by the following principles:

- I. National independence;
- II. The preeminence of human rights;
- III. The self-determination of peoples;
- IV. Nonintervention;
- V. Equality among nations;
- VI. The defense of peace;
- VII. The peaceful resolution of conflicts;
- VIII. Repudiation of terrorism and racism;
- IX. Cooperation among peoples for the advancement of humanity;
- X. The granting of political asylum.

Sole Paragraph. The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the peoples of Latin America, with a view to the formation of a Latin American community of nations.

Title II - Fundamental Rights and Guarantees

Chapter I - Individual and Collective Rights and Duties

Article 5.

All are equal before the law, without distinction of any sort. Both Brazilians and aliens resident in Brazil are guaranteed the inviolability of the right to life, liberty, equality, security, and property, under the following terms:

- I. Men and women are equal in rights and obligations under this Constitution;
- II. No one shall be obligated to do or to refrain from doing anything, except by virtue of the law;
- III. No one shall be subjected to torture, nor to inhuman or degrading treatment;
- IV. Thoughts may be freely expressed, but anonymity is forbidden;

V. The right to a response proportional to the offense is assured, in addition to indemnification for material or moral damages or injury to one's reputation;

VI. The freedom of conscience and belief is inviolable, the freedom to hold religious services is assured, and protection of the sites of religious services and their liturgies is guaranteed pursuant to law;

VII. The rendering of religious assistance in civilian and military collective confinement facilities is assured under the law;

VIII. No one shall be deprived of rights by reason of religious belief or philosophical or political conviction, unless the individual invokes them to gain exemption from a legal obligation that is imposed upon all and refuses to perform alternative service as established by law;

IX. Intellectual, artistic, scientific, and communications activity may be freely expressed, without censure or license;

X. The privacy, private life, honor, and reputation of persons is inviolable and the right to indemnification for material or moral damages resulting from the violation thereof is assured;

XI. The home is the inviolable refuge of the individual and no one may penetrate it without the consent of the resident except in cases of flagrante delicto or calamity or to render assistance or, during daylight hours, by court order;

XII. The confidentiality of correspondence and of telegraphic, data, and telephonic communications is inviolable except, in the latter case, by court order issued in such instances and manner as the law may establish for purposes of criminal investigation or the gathering of evidence in criminal cases;

XIII. Any work, occupation, or profession may be engaged in freely, with due regard for the professional qualifications established by law;

XIV. Access to information is assured to all, and the confidentiality of the source is safeguarded when necessary for the exercise of a profession;

XV. Individuals may travel freely within Brazilian territory in peacetime and any person may pursuant to law, enter, remain in, or depart from it with his property;

XVI. All may assemble peacefully without weapons in places open to the public and do so without authorization, provided that they do not disrupt another meeting scheduled earlier for the same site; advance notice to the appropriate authority is all that is required;

XVII. There is full freedom of association for legal purposes, but association of a paramilitary nature is forbidden;

XVIII. Authorization is not required for the creation of associations or, pursuant to law, of cooperatives, and government interference in their functioning is forbidden;

XIX. Only a judicial decision may force the dissolution of an association or the suspension of its activities; in the first of these cases, the decision must have become final and unappealable;

XX. No one may be compelled to associate or to remain associated;

XXI. Associative entities may, when expressly authorized, legitimately represent their members in and out of court;

XXII. The right of property is guaranteed;

XXIII. Property shall serve its social function;

XXIV. The law shall establish the procedure for expropriation on the grounds of public necessity or utility, or in the interest of society, against fair indemnification made in advance and in cash, except in instances for which provision is made in this Constitution;

XXV. In the event of imminent public danger, the appropriate authority may use private property and the owner is assured of subsequent indemnification if damage occurs;

XXVI. A small rural property holding, as defined in law and provided it is being worked by the family, shall not be attached to pay debts resulting from its productive activity; the law shall make provision for the means of financing its development;

XXVII. Authors have the exclusive right to use, publish or reproduce their works and this right is transferable to the heirs for such time as the law may determine;

XXVIII. The following are assured, under the law:

(a) The protection of individual participation in collective works and the reproduction of the human image and voice; including for sports activities;

(b) The right of the creators, interpreters, and their respective labor union and associative representations to inspect the economic utilization of the works which they created or in which they participated.

XXIX. The law shall assure the authors of industrial inventions temporary privilege for the utilization thereof, as well as protection of industrial creations and

the ownership of the trademarks, company names, and other distinctive seals, to provide for the interests of society and the technological and economic development of Brazil;

XXX. The right of inheritance is guaranteed;

XXXI. The succession of the property of aliens that is situated in Brazil shall be regulated by Brazilian law to the benefit of the Brazilian spouse or children, unless the personal law of the deceased is more favorable to them;

XXXII. The State shall promote the protection of the consumer, in such manner as the law may provide;

XXXIII. All are entitled to receive information from government entities when it is of private interest to them or of collective or general interest; such information, except that whose confidentiality is essential to the security of society and the State, shall be furnished within the interval established by law. Those who violate this principle may be held liable;

XXXIV. All are assured of the following, without payment of a fee:

(a) The right to petition the governments in the defense of rights or against illegality or abuse of power;

(b) The ability to obtain authenticated copies of documents and records at government offices in order to defend rights and clarify situations of personal interest;

XXXV. The law shall not exclude from review by the Judiciary Branch an injury or threat to a right;

XXXVI. The law shall not impair a vested right, a perfected juridical act, or a matter adjudged [res judicata].

XXXVII. There shall be no special courts or tribunals;

XXXVIII. The institution of the jury is recognized, in such form as may be organized by law, the following being assured:

(a) Full defense;

(b) The confidentiality of the balloting;

(c) The sovereignty of the verdicts;

(d) Jurisdiction to try felonious crimes against life;

XXXIX. There is no crime unless first defined by law, nor penalty without prior legal imposition;

XL. Criminal law shall not be retroactive, except to benefit the defendant;

XLI. The law shall punish any discrimination that is offensive to the basic rights and liberties;

XLII. The practice of racism constitutes a nonbailable and imprescriptible crime that is subject to punishment by incarceration, pursuant to law.

XLIII. The law shall consider as nonbailable crimes not subject to pardon or amnesty the practice of torture, the illegal traffic in narcotics and similar drugs, terrorism, and those crimes defined as heinous; those who order, carry out, or fail to prevent such crimes when it was possible to do so shall be held responsible;

XLIV. The action of armed civilian or military groups against the constitutional order and the democratic state constitutes a nonbailable and imprescriptible crime;

XLV. No penalty shall survive the convicted person; however, both the obligation to make reparation for the damage, and a forfeiture of assets decree may, according to the law, be extended to said person's successors and be executed against them, up to the limit of the value of the estate transferred;

XLVI. The law shall regulate the determination of the penalty for an individual case, and shall adopt penalties such as the following:

(a) Deprivation or restriction of liberty;

(b) Forfeiture of assets;

(c) Fine;

(d) Alternative community service;

(e) Suspension or interdiction of rights;

XLVII. The following penalties shall not exist:

(a) Death, except in case of war declared pursuant to Article 84, (XIX);

(b) Perpetual penalties;

(c) Forced labor;

(d) Exile;

(e) Cruel and unusual penalties;

XLVIII. The penalty shall be served in establishments that have been differentiated according to the nature of the offense and the age and sex of the convict;

XLIX. Prisoners are assured of respect for their physical and moral integrity;

L. Female inmates shall be assured conditions under which they may remain with their children during the period when they are breastfeeding;

LI. No Brazilian shall be extradited; however, a naturalized Brazilian may be extradited for an ordinary crime perpetrated prior to naturalization, or for proven involvement in illicit traffic in narcotics and similar drugs, pursuant to law;

LII. Extradition of an alien shall not be granted on the basis of a political crime or crime of opinion;

LIII. No one shall be tried or sentenced except by the competent authority;

LIV. No one shall be deprived of liberty or his property without due process of law;

LV. The litigants in a judicial or administrative proceeding, and accused persons in general are assured the right to an adversary proceeding and the opportunity to present a full defense, with the means and appeals inherent therein;

LVI. Evidence obtained by illicit means is inadmissible in the proceedings;

LVII. No one shall be considered guilty until the criminal conviction has become final and unappealable;

LVIII. One who has been identified by civil means shall not be submitted to criminal identification procedures except in the instances for which provision is made by law;

LIX. Private criminal charges may be filed when the public prosecutor has not instituted criminal proceedings within the legal interval;

LX. The law may only restrict publicity regarding the events in the proceedings when the protection of privacy or the interests of society so dictate;

LXI. No one shall be arrested except in flagrante delicto or by written and duly justified order of the proper judicial authority, except in cases of military transgressions or a distinctively military crime, so defined by law;

LXII. Notification of the arrest of any person and the place where he may be found shall immediately be communicated to the appropriate judge and the family of the detainee, or a person designated by same;

LXIII. The detainee shall be informed of his rights, among which are the right to remain silent, and he shall be assured the assistance of his family and an attorney;

LXIV. The detainee has the right to learn the identity of those responsible for his detention or for his interrogation by the police;

LXV. Illegal detention shall immediately be relaxed by the judicial authority;

LXVI. No one shall be taken to prison or held therein when the law permits provisional liberty, with or without bail;

LXVII. There shall be no civil imprisonment for indebtedness, other than that of one who is liable for voluntary and inexcusable failure to fulfill an obligation to make support payments, and the indebtedness of an unfaithful depositary;

LXVIII. Habeas corpus shall be granted whenever anyone suffers, or finds himself threatened with suffering, violence or coercion in his freedom of movement due to illegality or abuse of power;

LXIX. A writ of mandamus shall be granted in order to protect a definite and certain right, not protected by habeas corpus or habeas data, when the party responsible for the illegality or abuse of power is a public authority or an agent of a legal entity exercising the prerogatives of the Government;

LXX. The following may petition for a collective writ of mandamus:

(a) A political party having representation in the National Congress;

(b) A labor union, trade or professional association, or other legally constituted association that has been functioning for at least 1 year in defense of the interests of its members or affiliates;

LXXI. An injunction shall be granted whenever the absence of a regulatory rule makes inviable the exercise of the constitutional rights and liberties and the prerogatives inherent in nationality, sovereignty, and citizenship;

LXXII. Habeas data shall be granted:

(a) To ensure access to information relating to the person of the petitioner that is contained in the records or data banks of governmental or public entities;

(b) For the correction of data, when it is preferred this not be done to do so through confidential judicial or administrative proceedings;

LXXIII. Any citizen may legitimately file suit ["acao popular"] seeking to annul an act that is injurious to the public patrimony or to an entity in which the State has an equity interest, or to administrative morality, the environment, or the nation's historical and cultural heritage; in such event the plaintiff, unless proven to have acted in bad faith, shall be exempt from payment of court costs and the onus of defeat;

LXXIV. The State shall render full legal assistance free of charge to those who prove indigence;

LXXV. The State shall indemnify a convicted person for an error made by the judiciary, and shall do likewise for one who is imprisoned beyond the length of time prescribed in his sentence;

LXXVI. The following are free of charge for those recognized as indigent under the law:

- (a) The civil certificate of birth;
- (b) The certificate of death;

LXXVII. The actions of habeas corpus and habeas data are free of charge and, pursuant to law, the same is true of acts necessary for the exercise of citizenship;

Paragraph 1. The rules that define the basic rights and guarantees have immediate application;

Paragraph 2. The rights and guarantees set forth in this Constitution do not exclude others that may flow from the regime and the principles adopted herein, or from international treaties to which the Federative Republic of Brazil is party.

Chapter II - Social Rights

Article 6.

Under this Constitution, the social rights are education, health, work, leisure, security, pensions and social assistance, protection of mothers and infants, and assistance to the unprotected.

Article 7. The following are rights of both urban and rural workers, in addition to other rights directed toward improving their lot in society:

I. An employment relationship that is protected against arbitrary dismissal or dismissal without just cause, pursuant to complementary law, which shall provide for compensatory indemnification and other entitlements;

II. Insurance in the event of involuntary unemployment;

III. Participation in an unemployment compensation fund based on length of service, [FGTS];

IV. A minimum wage established by law and unified on a nationwide basis; such wage to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation, and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose;

V. A wage floor proportional to the scope and complexity of the work;

VI. Irreducibility of wages, except as provided in a collective convention or agreement;

VII. Guaranteed wage level, never lower than the minimum wage, for those remunerated on a variable basis;

VIII. Payment of the year-end bonus on the basis of full-time remuneration or the amount of the retirement pension;

IX. Higher remuneration for night work than for day-time work;

X. Protection of wages pursuant to law; felonious withholding thereof shall constitute a crime;

XI. Participation in the profits or earnings, independent of the worker's remuneration and, exceptionally, participation in the management of the enterprise, as may be defined in law;

XII. A family allowance for the worker's dependents;

XIII. Normal working hours not to exceed 8 hours per day and 44 hours per week; arrangements for compensation of hours and a reduction in the work day may be made by collective labor agreement or convention;

XIV. A 6-hour work day for work performed in uninterrupted shifts, unless otherwise agreed through collective bargaining;

XV. Paid time off every week, preferably on Sundays;

XVI. Overtime pay at a rate at least 55 percent higher than the normal;

XVII. Annual paid vacation remunerated at a rate at least one-third above the normal wage;

XVIII. Maternity leave, without impairment of employment or wages, for a duration of 120 days;

XIX. Paternity leave, under terms to be established by law;

XX. Protection of the labor market for women by means of specific incentives, pursuant to law;

XXI. Advance notice of dismissal proportional to the length of service but not less than 30 days, pursuant to law;

XXII. Reduction of the hazards inherent in work, achieved by means of health, hygiene, and safety standards;

XXIII. Additional remuneration for arduous, unhealthful, or dangerous activities, pursuant to law;

XXIV. Retirement benefits;

XXV. Assistance free of charge for children and dependents from birth through the age of 6, in day care centers and preschools;

XXVI. Recognition of collective labor agreements and conventions;

XXVII. Protection against the effects of automation, pursuant to law;

XXVIII. Insurance against accidents on the job, to be paid by the employer but not to the exclusion of the indemnification which the latter is obligated to make if cited for malice or negligence;

XXIX. The right to sue for sums owed him as a result of employment relationships, such right to expire after:

(a) 5 years for an urban worker, but not more than 2 years following the termination of the contract;

(b) Not more than 2 years for a rural worker following the termination of the contract;

XXX. Prohibition against differentials in terms of wages, duties, and hiring criteria on the basis of sex, age, color, or marital status;

XXXI. Prohibition against any discrimination concerning wages and hiring criteria for a handicapped worker;

XXXII. Prohibition against distinctions between manual, technical, and intellectual labor, or among the respective professions;

XXXIII. Prohibition against nighttime work or dangerous or unhealthful work for minors under the age of 18, and against any work for children under the age of 14, except as an apprentice;

XXXIV. Equality of rights between a worker who has tenure in his employment and one who is sporadically employed;

Sole Paragraph. Domestic workers as a category are assured of the rights for which provision is made in sections IV, VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as their integration into the social security system;

Article 8.

Individuals are free to join a professional association or labor union, with due regard for the following:

I. The law may not require that authorization from the State, except for registration with the appropriate agency, be obtained in order to establish a labor union, and the government is forbidden to interfere or intervene in union organization;

II. The creation of more than one labor union organization at any level to represent an occupational or economic category in a single geographical zone is forbidden; such zone shall be defined by the workers or employers concerned but may not be smaller than the area of a Municipality;

III. It is the duty of the union to defend the collective or individual rights and interests of the category it represents; this duty extends to judicial or administrative questions;

IV. The general meeting shall determine the contribution to be made by the category, and in the case of an occupational category, said dues shall be collected by payroll deduction in order to defray the cost of the confederative structure of the respective union representation, regardless of the contribution provided for by law;

V. No one shall be required to join or maintain membership in a union;

VI. It is mandatory that the unions participate in the collective bargaining process;

VII. A retired union member is entitled to vote and to be elected to positions in the union organization;

VIII. An employee who is a union member may not be dismissed after registering as a candidate for a position in union leadership or representation and if elected, even as an alternate, may not be dismissed until 1 year has passed since the end of his term of office, unless he commits a serious offense pursuant to the law;

Sole Paragraph. The provisions of this article apply to the organization of labor unions in rural areas and in fishing villages, with due regard for such conditions as may be established by law;

Article 9.

The right to strike is assured, and it is the province of the workers to determine the occasion for exercising this right and the interests to be defended thereby;

Paragraph 1. The law shall define the services or activities that are to be deemed essential, and shall make provision for the pressing needs of the community to be met;

Paragraph 2. Any abuses committed shall subject those responsible to the penalties of the law.

Article 10.

Workers and employers are assured the opportunity to participate on committees and similar bodies of the public agencies where their occupational or pension interests are the object of discussion and decisions;

Article 11.

In companies that have more than 200 employees, the workers are assured the opportunity to elect a representative whose sole purpose shall be to serve as a direct communication link between them and the employers.

Chapter III - Nationality

Article 12.

The following are considered to be Brazilians:

I. Native-born Brazilians are:

(a) Those born in the Federative Republic of Brazil, even if born to foreign parents, provided that said parents are not in the service of their country;

(b) Those born outside Brazil to a Brazilian father or mother, provided that either is in the service of the Federative Republic of Brazil;

(c) Those born outside Brazil to a Brazilian father or mother, provided that they have been registered at the appropriate Brazilian government office or come to reside in the Federative Republic of Brazil prior to attaining majority and, after attained such, opt for Brazilian nationality at some time;

II. Naturalized Brazilians are:

(a) Those who acquired Brazilian nationality pursuant to law; however, only uninterrupted residence for a period of 1 year and good moral character shall be required of persons from Lusophone countries;

(b) Aliens of any nationality who have resided in the Federative Republic of Brazil for more than 30 years without interruption and have not been convicted of a crime, provided that they apply for Brazilian nationality;

Paragraph 1. Citizens of Portugal who reside permanently in Brazil shall, if reciprocity is granted in favor of Brazilians, be afforded the rights inherent to a native-born Brazilian, except as provided in this Constitution.

Paragraph 2. The law may not establish a distinction between native-born and naturalized Brazilians, except as provided in this Constitution.

Paragraph 3. The following positions may be held only by native-born Brazilians:

I. The offices of President and Vice President of the Republic;

II. The office of president of the Chamber of Deputies;

III. The office of president of the Federal Senate;

IV. The office of minister on the Federal Supreme Court;

V. Positions in the diplomatic service;

VI. Officer positions in the Armed Forces.

Paragraph 4. The nationality of a Brazilian who takes either of the following actions shall be declared forfeit:

I. Has his naturalization cancelled by court order by virtue of activities injurious to the national interest;

II. Acquires another nationality through voluntary naturalization;

Article 13.

The Portuguese language is the official language of the Federative Republic of Brazil.

Paragraph 1. The flag, the national anthem, the coat of arms and the national seal are symbols of the Federative Republic of Brazil.

Paragraph 2. The States, the Federal District, and the Municipalities may adopt their own symbols.

Chapter IV - Political Rights

Article 14.

Popular sovereignty shall be exercised by universal suffrage and by direct and secret ballot, with equal value given to all and, pursuant to law, by means of the following:

I. Plebescite;

II. Referendum;

III. Popular initiative;

Paragraph 1. Registration to vote and the act of voting shall be:

I. Obligatory for persons who have attained the age of 18;

II. Optional for:

(a) Those who are illiterate;

(b) Those who have attained the age of 70;

(c) Those who have attained the age of 16 but are under the age of 18;

Paragraph 2. Neither aliens, nor conscripts who are fulfilling their obligatory military service, may register for the vote.

Paragraph 3. The following are the conditions for election to office, pursuant to law:

- I. Brazilian nationality;
- II. Full possession of one's political rights;
- III. Registration as a voter;
- IV. Voting residence in the specific district;
- V. Party affiliation;
- VI. Attainment of at least the following ages:
 - (a) 35 years for the offices of President and Vice President of the Republic, and for the office of senator;
 - (b) 30 years for the offices of governor or lieutenant governor of a State or of the Federal District;
 - (c) 21 years for federal deputy, State or District deputy, mayor and vice mayor, and justice of the peace;
 - (d) 18 years for city councilman.

Paragraph 4. Illiterates and persons who are not eligible to register to vote are not eligible for election to office.

Paragraph 5. The following may not be re-elected to the same office for the next subsequent term: the President of the Republic, the State and Federal District governors, the mayors, or those who may have succeeded them or replaced them during the 6 months prior to the election.

Paragraph 6. In order to run as candidates for other offices, the President of the Republic, the State and Federal District governors, and the mayors must resign their respective posts not later than 6 months prior to the election.

Paragraph 7. Neither the spouse, nor blood relatives or in-laws up to the second degree, nor relatives by adoption of one who holds the office of President of the Republic, State, Territorial or Federal District Governor, or Mayor may run for elected office in the territory of jurisdiction of the office holder, nor may anyone who has replaced such office holder within 6 months prior to the election do so, unless they already hold an elective office and are a candidate for re-election.

Paragraph 8. A member of the military who is eligible to register to vote may be elected to office, if the following conditions are met:

- I. If the individual in question has less than 10 years of service, he must resign from active military service;

- II. If the individual in question has more than 10 years of service, he shall be placed on leave of absence by the higher authority and, if elected, shall automatically pass to inactive status immediately upon taking office.

Paragraph 9. Complementary law shall establish other instances of ineligibility to hold elective office and the terms under which such ineligibility may cease, in order to protect the normality and legitimacy of the elections from the influence of economic power or the abuse of a function, position, or employment in the direct or indirect administration.

Paragraph 10. An elective mandate may be challenged in the Electoral Courts within 15 days of the elected person's certification; such action is to be supported by evidence of abuse of economic power, corruption or fraud;

Paragraph 11. Proceedings challenging an elective mandate shall be heard in secrecy in the court and plaintiff shall be held liable under the law if deemed to be acting precipitately or in manifest bad faith.

Article 15.

Disenfranchisement of political rights is forbidden; they may only be lost or suspended in the following instances:

- I. Cancellation of naturalization by a court sentence that has become final;
- II. Absolute civil incapacity;
- III. Criminal conviction that has become final, but only for the duration of the sentence;
- IV. Refusal to fulfill an obligation imposed on all, or to perform alternative service, pursuant to Article 5, VIII;
- V. Administrative dishonesty pursuant to Article 37, paragraph 4.

Article 16.

A law that alters the electoral process shall enter into force only after 1 year has elapsed since its promulgation.

Chapter V - Political Parties

Article 17.

Political parties may be freely created, consolidated, merged, and extinguished provided that national sovereignty, the democratic regime, the principle of multiple parties, and basic human rights are safeguarded and that the following precepts are observed:

- I. The party must be Brazilian in character;
- II. No financial resources may be received from a foreign entity or government or a source subordinate to same;

III. Party accounts must be submitted to the Electoral Courts;

IV. Parliamentary functioning is to be in accordance with law;

Paragraph 1. The political parties are assured autonomy in defining their internal structure, organization, and manner of functioning, however their by-laws must contain rules on party loyalty and discipline;

Paragraph 2. After acquiring legal identity pursuant to civil law, political parties shall record their by-laws with the Superior Electoral Court.

Paragraph 3. Political parties are entitled to resources from the party fund and free access to radio and television, pursuant to law.

Paragraph 4. Political parties are forbidden to use paramilitary forms of organization;

Title III - The Organization of the State

Chapter I - Political and Administrative Structure

Article 18.

The political and administrative structure of the Federative Republic of Brazil is comprised of the Union, the States, the Federal District, and the Municipalities, all of which are autonomous, pursuant to this Constitution.

Paragraph 1. Brasilia is the federal capital.

Paragraph 2. The Federal Territories are part of the Union; creation of a territory and its conversion to a State or reincorporation into its State of origin shall be regulated in complementary law;

Paragraph 3. The States may merge with each other, subdivide, or dismember themselves in order to join with others or to form new States or Federal Territories upon approval, expressed in a plebescite, of the population that is directly interested and with the consent of the National Congress expressed through complementary law.

Paragraph 4. The creation, merger, consolidation, or dismemberment of Municipalities shall preserve the continuity and the historical-cultural unity of the urban environment; it shall be accomplished by state law, the requirements of complementary state law having been obeyed, and shall require advance consultation, through a plebescite, with the populations that are directly interested.

Article 19.

The Union, the States, the Federal District, and the Municipalities are forbidden to:

I. Establish religious sects or churches, subsidize them, impede their functioning, or maintain relations of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest pursuant to law;

II. Refuse to honor public documents;

III. Create distinctions among Brazilians or preferences among themselves;

Chapter II - The Union

Article 20.

The following are the property of the Union:

I. Those assets which presently belong to it and those which may be attributed to it;

II. Those unoccupied lands essential to the defense of the borders, the military fortifications and buildings and the federal highways, and for environmental protection, as defined by law;

III. All lakes, rivers, and watercourses within its domain, or that touch the shores of more than one State, serve as boundaries with other countries, or that extend into foreign territory or proceed from same, as well as land along the edges thereof,¹ and the river beaches;

IV. The river and lake islands in the border zones with other countries, the maritime beaches, and the ocean and coastal islands, but excluding the areas referred to in Article 26, II.

V. The natural resources of the continental shelf and the exclusive economic zone;

VI. The territorial sea;

VII. The marine lands and their accretions²;

VIII. The potential sources of hydroelectric power;

IX. The mineral resources, including those of the subsoil;

X. The natural subterranean cavities and the archaeological and prehistoric sites;

XI. The lands traditionally occupied by the Indians.

Paragraph 1. The States, the Federal District, and the Municipalities, as well as the entities of the direct administration of the Union are assured, pursuant to law, a share in the proceeds from the exploitation of petroleum or natural gas, of water resources for electrical energy generation purposes, and of other mineral

resources within their respective territories, on the continental shelf, in the territorial sea or exclusive economic zone, or financial compensation in return for such exploitation.

Paragraph 2. A strip of territory not more than 150 kilometers wide situated along the land borders of Brazil and known as the border strip is considered fundamental to the defense of the nation's territory; its occupation and utilization shall be regulated by law.

Article 21.

The Union shall have the power to:

I. Maintain relations with foreign states and participate in international organizations;

II. Declare war and make peace;

III. Ensure the national defense;

IV. Permit foreign forces, in the cases provided for in complementary law, to transit through the national territory or to remain temporarily therein;

V. Decree a state of siege, a state of emergency, and federal intervention;

VI. Authorize and supervise the production and trade in war materiel;

VII. Issue money;

VIII. Administer the foreign exchange reserves of the country and supervise transactions of a financial nature, especially those of credit, exchange, and capitalization, as well as insurance and private pension plans;

IX. Draft and carry out national and regional plans for zoning the territory and for economic and social development;

X. Maintain the postal and domestic air mail services;

XI. Operate, directly or through concession granted to companies whose shares are controlled by the government, the telephone, telegraph, data transmission, and other public telecommunications services with the assurance that information services may be provided by private entities over the public telecommunications network operated by the Union;

XII. Operate the following, directly or through authorization, concession, or permission:

(a) Services of radio sound transmission, transmission of sounds and images, and other telecommunications services;

(b) Electrical energy services and facilities, and the utilization of the watercourses for energy purposes in connection with the States where the potential sources of hydroelectric power are situated;

(c) Aviation, aerospace travel, and airport infrastructure;

(d) Railway and waterway transportation services between Brazilian ports on the nation's borders or across the boundaries of a State or Territory;

(e) Interstate and international highway transportation of passengers;

(f) The maritime, river, and lake ports;

XIII. Organize and maintain the Judicial Branch and the Offices of the Government Attorney and of the Public Defender for the Federal District and the Territories;

XIV. Organize and maintain the federal police and the federal highway and railroad police, as well as the civilian police, military police, and the military fire departments for the Federal District and the Territories;

XV. Organize and maintain the official statistical, geographical, geological, and cartographical services that are national in scope;

XVI. Classify, for indicatory purposes, public entertainment and radio and television programs;

XVII. Grant amnesty;

XVIII. Plan and arrange for a permanent defense against public disasters, especially droughts and floods;

XIX. Institute a national water resources management system and define the criteria for granting rights to the use of said resources;

XX. Institute guidelines for urban development, including housing, basic sanitation, and urban transportation;

XXI. Establish principles and directives for the national highway system;

XXII. Perform the Coast Guard, air police, and border patrol services;

XXIII. Operate nuclear energy services and facilities of any type and exercise a government monopoly over the prospecting, mining, enrichment and reprocessing, industrial use of, and commerce in nuclear ores and their derivatives, with due regard for the following principles and conditions:

(a) No nuclear energy activities shall be permitted in Brazilian territory except for peaceful purposes and by approval of the national Congress;

(b) The utilization of radioisotopes for research and applications in the fields of medicine, agriculture, industry, and analogous activities is authorized, under a system of concessions or permits;

(c) Civil liability for nuclear damages does not depend on the existence of culpability;

XXIV. Organize, maintain, and perform the labor inspection function, pursuant to law;

XXV. Determine the areas where rudimentary prospecting [for minerals] may take place and the conditions for engaging in this activity in an associative manner.

Article 22.

Authority to legislate on the following subjects is reserved to the Union:

I. Civil, commercial, criminal, procedural, electoral, agrarian, maritime, aviation, aerospace, and labor law;

II. Expropriation;

III. Civilian and military requisitioning in the event of imminent danger and in time of war;

IV. Waters, energy, information science, telecommunications, and radio broadcasting;

V. The postal service;

VI. Monetary and measures systems; title and guarantees of metals;

VII. Policies on credit, exchange, insurance, and the transfer of securities and other funds;

VIII. Foreign and interstate commerce;

IX. Guidelines on national transportation policy;

X. The regimen for the ports and lake, river, maritime, air, and aerospace navigation;

XI. Traffic and transportation;

XII. Mineral deposits, mines, and other mineral resources and metallurgy;

XIII. Nationality, citizenship, and naturalization;

XIV. The indigenous peoples;

XV. Emigration and immigration; the entry, extradition, and expulsion of aliens;

XVI. Organization of the national employment system and the conditions for engaging in the practice of certain professions;

XVII. Organization of the judiciary, the Offices of Government Attorney and the Offices of the Public Defender for the Federal District and the Territories, as well as the administrative organization of these entities;

XVIII. The national statistical, cartographical, and geological systems;

XIX. The savings system; the attracting and guaranteeing of individual savings accounts;

XX. Consortium purchase schemes; lotteries;

XXI. General rules regarding the military police and fire departments: their organization, personnel, war materiel, guarantee, call-up and mobilization;

XXII. The sphere of authority of the federal police and the federal highway and railroad police;

XXIII. Social security;

XXIV. Guidelines and foundations of the national education system;

XXV. Public registries;

XXVI. Nuclear energy activities of any type;

XXVII. The general rules on all modes of bidding and contracting that are to be observed by the direct and indirect public administration, including the foundations established and maintained by the Government at the various levels of government, and the companies under its control;

XXVIII. Territorial defense, aerospace defense, civil defense, and national mobilization;

XXIX. Commercial advertising.

Sole Paragraph. Complementary law may authorize the States to legislate on specific aspects of the subjects listed in this article.

Article 23.

The Union, the States, the Federal District, and the Municipalities have a mutual responsibility to:

I. Safeguard the Constitution, the laws, and the democratic institutions and conserve the public patrimony;

II. Take care of public health and welfare and protect and support handicapped persons;

III. Protect the documents, works, and other items of historical, artistic, and cultural value, and the monuments, significant natural landscapes, and archaeological sites;

IV. Prevent the disappearance, destruction, and defacing of works of art and other items of historical, artistic, or cultural value;

V. Furnish means of access to culture, education, and science;

VI. Protect the environment and combat pollution in any of its forms;

VII. Preserve the forests, fauna, and flora;

VIII. Foster agricultural and livestock production and organize the food supply;

IX. Promote housing construction programs and the improvement of living and basic sanitation conditions;

X. Combat the causes of poverty and the factors that work to keep people out of the mainstream of society, by promoting the integration of the disadvantaged into society;

XI. Record, monitor, and supervise the concession of rights to explore for and exploit water and mineral resources within their territories;

XII. Determine and implement a policy for traffic safety education;

Sole Paragraph. Complementary law shall set rules for the cooperation among the Union, the States, the Federal District and the Municipalities with a view to achieving a balanced development and welfare on the national scene.

Article 24.

It is the province of the Union, the States, and the Federal District to legislate concurrently on the following subjects:

I. Tax, financial, penitentiary, economic, and urban planning law;

II. The budget;

III. The commercial boards ["juntas comerciais"];

IV. The costs of court services;

V. Production and consumption;

VI. Forestry, hunting, fishing, fauna, nature conservation, protection of the soil and the natural resources, protection of the environment, and pollution control;

VII. Protection of the nation's historical, cultural, artistic, touristic, and scenic heritage and assets;

VIII. Liability for damage to the environment, the consumer, and to rights and property having artistic, esthetic, historical, touristic, or scenic value;

IX. Education, culture, instruction, and sports;

X. The creation and functioning of small claims courts;

XI. Procedures to be followed in court proceedings;

XII. Pensions and social assistance, protection and defense of health;

XIII. Public legal assistance and public defenders;

XIV. The protection and integration into society of handicapped persons;

XV. The protection of children and youth;

XVI. The organization, guarantees, rights, and responsibilities of the civilian police forces;

Paragraph 1. Within the context of concurrent legislation, the authority of the Union shall be limited to establishing general rules;

Paragraph 2. The authority of the Union to legislate on general rules does not exclude the supplementary authority of the States.

Paragraph 3. In the absence of federal law concerning general rules, the States shall exercise full legislative jurisdiction in handling their particular situations.

Paragraph 4. Subsequent enactment of a federal law concerning general rules acts to suspend the efficacy of the state law insofar as it conflicts therewith.

Chapter III - The Federated States

Article 25.

The States are organized and governed by the constitutions and the laws they adopt, the principles of this Constitution being observed.

Paragraph 1. Spheres of authority not forbidden to them by this Constitution are reserved to the States.

Paragraph 2. The States have authority to operate the local gas main services either directly or by concession to a government-controlled company, which shall have exclusive distribution rights;

Paragraph 3. The States may, under complementary law, institute metropolitan regions, urban complexes, and microregions made up of groups of neighboring Municipalities in order to integrate the organization, planning, and execution of public functions that are of mutual interest.

Article 26.

The following are included in the property of the States:

I. The surface or underground waters, whether flowing, emerging, or in reservoirs except, in the latter case and pursuant to law, those resulting from public works executed by the Union;

II. The areas on the ocean and coastal islands that are in their domain, excluding those under the domain of the Union, the Municipalities, or third parties;

III. The river and lake islands that do not belong to the Union;

IV. Unoccupied lands that are not included among those of the Union;

Article 27.

The number of deputies in the state Legislative Assembly shall correspond to three times the number in a State's delegation to the federal Chamber of Deputies, and when this number has reached 36, it shall be increased by as many persons as the number of federal deputies exceeds 12.

Paragraph 1. The term of office of the state deputies shall be 4 years, and the rules of this Constitution concerning the electoral system, inviolability, immunities, remuneration, loss of mandate, leave, impediments, and membership in the Armed Forces apply to them.

Paragraph 2. The remuneration of the state deputies shall be determined by the Legislative Assembly in each legislative session for application to the subsequent session, with due regard for the provision of Articles 150(II), 152(III) and 153, paragraph 2, (I).

Paragraph 3. The Legislative Assemblies have authority to provide for their internal rules, their police, and the administrative services of their secretariats, as well as to fill the respective positions.

Paragraph 4. The law shall provide for popular initiative in the state legislative process.

Article 28.

The election of a state governor and lieutenant governor for 4-year terms shall be held 90 days prior to the end of the term of office of their predecessors and they shall take office on the first day of January of the following year; the provision of Article 77 is to be observed as regards the remaining aspects.

Sole Paragraph. A governor who assumes another position or function in the direct or indirect public administration shall lose his mandate, except when office is assumed by virtue of public competition and the provision in Article 38(I), (IV), and (V) is observed.

Chapter IV - The Municipalities

Article 29.

A Municipality shall be governed by a charter, which is to be voted on in two rounds conducted at least 10 days apart and approved by two-thirds of the members of the Municipal Chamber, which shall promulgate the charter; the principles established in this Constitution, in the constitution of the respective State, and the following precepts shall be adhered to:

I. The mayor, the vice mayor and the councilmen are to be elected for 4- year terms by direct elections held simultaneously throughout the country;

II. Elections for mayor and vice mayor are to be held not later than 90 days prior to the end of the term of office of those whom they are to succeed; however, the rules of Article 77 apply to Municipalities that have more than 200,000 voters;

III. The mayor and vice mayor are to take office on January 1 of the year following their election;

IV. The number of councilmen is to be proportional to the population of the Municipality, the following limits being observed:

(a) At least 9, but not more than 21 councilmen for Municipalities having 1 million or fewer inhabitants;

(b) At least 33, but not more than 41 councilmen for Municipalities having more than 1 million but fewer than 5 million inhabitants;

(c) At least 42, but not more than 55 councilmen for Municipalities having more than 5 million inhabitants;

V. The remuneration of the mayor, the vice mayor, and the councilmen shall be determined by the Municipal Chamber in each legislative session for application to the subsequent session, with due regard for the provision of Articles 37(XI), 150(II), 153(III) and 153, paragraph 2, (I);

VI. Councilmen enjoy inviolability as regards their opinions, statements, and votes during the exercise of their mandate and within the geographical area of the Municipality;

VII. Prohibitions and incompatibilities similar, insofar as appropriate, to the provisions in this Constitution for the members of the National Congress and in the constitution of the respective State for the members of the Legislative Assembly apply to the exercise of the office of councilman;

VIII. A mayor may be tried in a court of justice;

IX. Organization of the legislative and supervisory functions of the Municipal Chamber;

X. Cooperation by the representative associations in municipal planning;

XI. Popular initiative may be exercised on bills of specific interest to the Municipality, the city, or the neighborhoods, by petition of at least 5 percent of the electorate;

XII. Loss of mayoral mandate, pursuant to the sole paragraph of Article 28;

Article 30.

The Municipalities have authority to:

I. Legislate on matters of local interest;

II. Supplement federal and state legislation where appropriate;

III. Institute the collection of taxes over which they have jurisdiction and apply the proceeds thereof, without prejudice to the obligation to render accounts and publish trial balance sheets at the intervals established by law;

IV. Create, organize, and eliminate districts, with due regard for state legislation;

V. Organize and provide, either directly or under a concession or permit system, public services that are of local interest, including public transportation, which is an essential service;

VI. Maintain, with the technical and financial cooperation of the Union and the State, programs of preschool and elementary education;

VII. Furnish public health services, with the technical and financial cooperation of the Union and the State;

VIII. Promote, insofar as appropriate, a suitable territorial structure through planning and control over the use, subdivision, and occupation of the urban land area;

IX. Promote the protection of the local historical and cultural patrimony, observing federal and state legislation and supervisory actions;

Article 31.

Supervision over the Municipality shall be exercised by the municipal legislative authority through external control and by the internal control systems of the municipal executive, pursuant to law;

Paragraph 1. The Municipal Chamber shall exercise its external control with the aid of the state or municipal Tribunal of Accounts or of the Council or Tribunal of Accounts of the Municipality, where such exist.

Paragraph 2. The preliminary opinion issued by the authorized body concerning the accounts that the Mayor must render on an annual basis can be overruled only by decision of two-thirds of the members of the Municipal Chamber.

Paragraph 3. The accounts of the Municipalities shall remain available for examination and review by any taxpayer for a period of 60 days each year; the taxpayer may question the legitimacy thereof pursuant to law.

Paragraph 4. The creation of tribunals, councils, or other municipal accounts bodies is prohibited.

Chapter V - The Federal District and the Territories

Section I - The Federal District

Article 32.

The Federal District, which shall not be divided into Municipalities, shall be governed by a charter, to be voted on in two rounds conducted at least 10 days apart and approved by two-thirds of the members of the Legislative Chamber, which shall promulgate the charter, the principles established in this Constitution being observed;

Paragraph 1. The spheres of legislative authority that are reserved to the States and Municipalities are conferred upon the Federal District.

Paragraph 2. The election of the governor and lieutenant governor and the Federal District deputies shall, the rules of Article 77 having been observed, coincide with that of the state governors and deputies and the term of office shall be of equal duration.

Paragraph 3. The provision of Article 27 applies to the Federal District deputies and to its Legislative Chamber.

Paragraph 4. Federal law shall make provision concerning the use, by the Government of the Federal District, of the civilian and military police departments and the military fire department.

Section II - The Territories

Article 33.

The law shall make provision concerning the administrative and judiciary organizational structure of the Territories.

Paragraph 1. The Territories may be divided into Municipalities, to which the provisions of Chapter IV of this Title shall apply insofar as appropriate.

Paragraph 2. The accounts of a territorial government shall be submitted to the National Congress, along with the preliminary opinion of the Tribunal of Accounts of the Union.

Paragraph 3. Federal Territories that have more than 100,000 inhabitants shall, in addition to a Governor appointed pursuant to this Constitution, have courts of original and appellate jurisdiction, members of the Office of the Government Attorney, and federal public defenders; the law shall make provision concerning elections to the Territorial Chamber and its decisionmaking authority.

Chapter VI - Intervention

Article 34.

The Union shall not intervene in the States except to:

- I. Maintain the integrity of the nation;
- II. Repel foreign invasion, or that of one unit of the Federation into another;
- III. Put an end to a serious disturbance of the public order;
- IV. Guarantee any of the branches of government power freedom to act within the units of the Federation;
- V. Reorganize the finances of a unit of the Federation that:
 - (a) Suspends payment on its funded debt for more than 2 consecutive years, except for reasons of force majeure;
 - (b) Fails to deliver to the Municipalities, within the intervals determined by law, the tax revenues established in this Constitution;
- VI. Arrange for execution of federal law, order, or court decision;
- VII. Ensure the observance of the following constitutional principles:
 - (a) Republican form of government, representative system, and democratic regime;

(b) Human rights;

(c) Municipal autonomy;

(d) Rendering of accounts by the public administration, both direct and indirect;

Article 35.

A State shall not intervene in its Municipalities, nor shall the Union intervene in the Municipalities situated in a Federal Territory, except when:

- I. The funded debt has not been paid for 2 consecutive years, and no motive of force majeure is present;
- II. The proper municipal accounts have not been rendered pursuant to law;
- III. The required minimum share of municipal revenues has not been invested in the maintenance and development of education;
- IV. The Court of Justice appoints representatives to assure the observance of principles contained in the state Constitution, or to provide for execution of a law, order, or court decision.

Article 36.

Issuance of a decree of intervention shall be dependent upon:

- I. In the case of Article 34(IV), request by the legislative or executive branch that has been coerced or impeded, or a request by the Federal Supreme Court, if the coercion was exercised against the judiciary;
- II. In the case of disobedience of a court order or decision, request from the Federal Supreme Court, the Superior Court of Justice, or the Superior Electoral Court;
- III. Appointment, by the Federal Supreme Court, of representation from the Attorney General of the Republic, in the event of Article 34(VII);
- IV. Appointment, by the Superior Court of Justice, of representation from the Attorney General of the Republic in the event of refusal to carry out a federal law.

Paragraph 1. The decree of intervention, which shall specify its scope, duration, and the conditions of its execution and appoint the intervenor if appropriate, shall be submitted to for consideration by the National Congress or the state legislature within 24 hours.

Paragraph 2. If either the National Congress or the state legislature is not in session, a special session shall be convened within that same 24-hour period.

Paragraph 3. In the events of Article 34(VI) and (VII), or Article 35(IV), the requirement for consideration by the National Congress or state legislature may be waived and the decree be limited to suspending execution of the contested act, if this measure is sufficient to restore normality;

Paragraph 4. When the motives for intervention no longer apply, the officials who were removed from their posts shall return to them unless barred by law.

Chapter VII - Public Administration

Section I - General Provisions

Article 37.

The direct and indirect public administration of any of the branches of government of the Union, the States, the Federal District and the Municipalities, including the public foundations, shall obey the principles of legality, impartiality, morality, and publicity and, also, the following:

I. Public office, employment, and duties shall be open to Brazilians who meet the requirements established by law;

II. Investiture in government office or employment is dependent upon prior approval gained in public competition on the basis of examination, or examination and presentation of credentials, except for appointments to temporary positions the occupants of which may, as declared by law, be appointed and removed at will.

III. A public competition shall be valid for a period of up to 2 years, which may be extended, once only, for a like interval;

IV. During the nonextendable interval specified in the invitation to compete, one who is approved in a public competition conducted on the basis of examination, or of examination and presentation of credentials, shall be given priority for being called to accept an office or employment in that career service over new candidates who have participated in the competition;

V. Temporary or interim positions and positions of confidence shall, preferably, be held by career public servants who hold technical or professional positions, in the cases and under the conditions provided by law;

VI. Civilian public servants are guaranteed the right freely to join unions;

VII. The right to strike shall be exercised under such terms and with such limitations as defined in complementary law;

VIII. The law shall reserve a percentage of the public posts and jobs for handicapped persons and shall determine the criteria for hiring them;

IX. The law shall establish the instances in which persons may be contracted for specific periods of time in order to meet temporary needs of unusual public interest;

X. The general review of the remuneration paid to public servants, conducted on the basis of the same indices for both civilian and military public servants, shall always be performed on the same date;

XI. The law shall set the maximum remuneration and the ratio between the highest and lowest levels of remuneration for public servants; in so doing it shall observe, as maximum limits and within the spheres of the respective branches of government, the sums received as cash remuneration of any type by members of the National Congress, ministers of state, the ministers on the Federal Supreme Court, and their opposite numbers in the States, the Federal District, and the Territories; in the Municipalities, the sums received as cash remuneration by the mayor shall be considered as the maximum;

XII. Salaries for the positions in the legislative and judicial branches may not exceed those paid by the executive branch;

XIII. Salary levels shall not be used as bases of reference or in establishing equivalencies for purposes of remuneration of public servants, except as provided in XII above and in Article 39, paragraph 1;

XIV. The monetary increases received by public servants shall not be computed or accumulated for purposes of granting subsequent pay increases under the same heading or on identical grounds;

XV. The salaries of public servants, both civilian and military, are irreducible and the remuneration shall be in accordance with the provisions of Articles 37(XI and XII), 150 (II), 153(III), and 153, paragraph 2(I);

XVI. The remunerated accumulation of positions in the public service is prohibited, except the following, when the hours are compatible:

- (a) Two positions as teacher or professor;
- (b) One position as teacher and another that is a technical or scientific position;
- (c) Two positions of the kind reserved for physicians;

XVII. The prohibition against holding more than one position extends to jobs and functions and covers autonomous entities ["autarquias"], public corporations, mixed-economy companies, and foundations maintained by the Government;

XVIII. The treasury administration and its public servant auditors shall, within their areas of authority and jurisdiction, have precedence over the other administrative sectors, pursuant to law;

XIX. A public corporation, mixed-economy firm, autonomous entity, or government foundation may only be created by specific law;

XX. The creation of subsidiaries of the entities referred to in XIX above requires legislative authorization in each case, as does the acquisition by any such entity of an interest in a private firm;

XXI. Except for cases specified in legislation, public works, services, purchases, and transfers shall be contracted through a public bidding procedure that assures all competitors of equal conditions, with clauses establishing payment obligations that retain the original terms of the bid and is conducted pursuant to law, which shall permit inclusion of only such requirements concerning technical and economic qualifications as are indispensable to guarantee fulfillment of the obligations.

Paragraph 1. The publicity concerning the acts, programs, public works, services, and campaigns undertaken by public bodies must be of an educational, informative, or social orientation nature; they may not contain names, symbols, or images that would characterize personal promotion of officials or public servants.

Paragraph 2. The failure to observe the provision in parts II and III shall result in the nullification of the act and punishment of the responsible official, pursuant to law.

Paragraph 3. Complaints regarding the rendering of public services shall be governed by law.

Paragraph 4. The consequences of acts of administrative dishonesty shall include the suspension of political rights, the forfeiture of public employment, loss of access to the property, and the making of restitution to the treasury, in the manner and to the degree provided by law, without prejudice to the appropriate criminal action.

Paragraph 5. The law shall establish the extent of the statute of limitations for illegal acts committed by any agent, whether or not he is a public servant, that cause loss to the treasury, except for suits seeking restitution.

Paragraph 6. Public and private legal entities that provide public services shall be liable for the damages that their agents, acting in such capacity, cause to third parties; the right of recourse against the responsible party in cases of malice or culpability is assured.

Article 38.

The following provisions apply to a public servant who is serving a term of elective office:

I. If it is a federal, state, or district elective office, he shall withdraw from his government position, employment, or duty;

II. One who has formally taken office as mayor shall be removed from his position, employment, or duty, but is permitted to opt to receive its level of remuneration;

III. One who has formally taken office as councilman may, if the hours are compatible, receive the benefits of his position, employment, or duty without prejudice to the remuneration of the elective office, but if the hours are not compatible, the rule of II above shall apply;

IV. In any case that requires withdrawal from other public employment in order to serve the term of elective office, the incumbent's time in service will be counted for all intents and purposes of law, except for promotion on the basis of merit;

V. For the purposes of pension benefits, in the case of such withdrawal, the amounts shall be determined as if the individual had continued in that position.

Section II - Civilian Public Servants

Article 39.

The Union, the States, the Federal District, and the Municipalities shall institute within their respective spheres of authority a single legal regimen and career ladders for the employees of the direct public administration, the autonomous entities, and the public foundations.

Paragraph 1. The law shall assure the employees of the direct administration equality before the law as regards salaries for identical jobs and assigned duties—or jobs and duties determined to be similar—within the same branch of government or among employees of the Executive, Legislative, and Judicial branches, except for benefits of an individual character and those related to the nature or the location of the work.

Paragraph 2. The provisions in Article 7 (IV), (VI), (VII), (VIII), (IX), (XII), (XIII), (XV), (XVI), (XVII), (XVIII), (XIX), (XX), (XXII), (XXIII), and XXX apply to these employees.

Article 40.

A public servant shall be retired under the following conditions:

I. Due to permanent disability, at full pension when the disability results from an on-the-job accident, occupational disease or serious, contagious or incurable illness as specified in law, and at proportional pension in other cases;

II. Mandatorily on reaching age 70, at a pension proportional to length of service;

III. Voluntarily:

(a) After 35 years of service for men and after 30 years for women, with full pension;

(b) After 30 years of tenured service in the teaching profession for male professors and 25 years for female professors, with full pension;

(c) After 30 years of service for men and 25 for women, with pension proportional to such length of service;

(d) At age 65 for men and age 70 for women, with pensions proportional to the length of service.

Paragraph 1. Complementary law may establish exceptions to the provision in parts III(a) and (c) in cases where the individual was engaged in activities considered arduous, unhealthful, or hazardous.

Paragraph 2. The law shall provide for retirement from temporary positions or employment.

Paragraph 3. The length of public federal, state, or municipal service shall be computed as a whole for purposes of retirement and availability for duty.

Paragraph 4. The amounts of the retirement pensions shall be reviewed, in the same proportion and on the same date, whenever the remuneration of the employees in active service is modified, and inactive personnel shall also be extended any benefits or advantages subsequently granted to the active employees, even when these result from a conversion or reclassification of the position or function from which the individual retired, according to law.

Paragraph 5. The amount of the death benefit shall correspond to the entire amount of the salary or pension of the deceased public servant, up to the limit established by law, the provision in the previous paragraph being observed.

Article 41.

After 2 years of service as a permanent employee, those civil servants who were appointed as the result of a public competition shall acquire tenure.

Paragraph 1. A tenured public servant shall only lose his position by virtue of a court sentence that has become final and is unappealable, or through an administrative proceeding during which he is assured the right to present a full defense.

Paragraph 2. In the event that the dismissal of a tenured civil servant is invalidated by court decision, the employee shall be rehired and whoever may be occupying that vacancy shall be transferred back to his original post without any right to indemnification, utilized in another position, or placed on the list of those available for duty.

Paragraph 3. In the event his position is abolished or declared superfluous, a tenured public servant shall remain in a remunerated, available status until he can be appropriately used in another position.

Section III - Military Public Servants

Article 42.

The Federal military servants are the members of the Armed Forces; the military servants of the States, Territories, and the Federal District are the members of their military police forces and their military fire departments.

Paragraph 1. Officers who are in active service, in the reserve, or retired from the Armed Forces or the military police forces, and the military fire departments of the States, the Territories, and the Federal District are fully guaranteed their ranks, with the privileges, rights, and duties inherent therein; their military credentials, posts, and uniforms are exclusively theirs.

Paragraph 2. The ranks of the officers of the Armed Forces are conferred upon the members thereof by the President of the Republic; the ranks of the officers in the military police forces and military fire departments of the States, Territories, and the Federal District are conferred by the respective governors.

Paragraph 3. A member of the military who is on active service and accepts permanent civilian public employment shall be transferred to the reserve.

Paragraph 4. A member of the military who accepts a nonelective temporary public office, employment, or duty—even if in the indirect administration—shall remain attached to the respective roster and while remaining in said status may be promoted only due to seniority, his time of service counting only toward that promotion and transfer to the reserve; after 2 years of absence, whether continuous or not, he shall be transferred to inactive status.

Paragraph 5. The military are prohibited from becoming unionized and from going on strike.

Paragraph 6. While in active service, a member of the military may not be a member of political parties.

Paragraph 7. An officer of the Armed Forces may lose his post and rank only if found unworthy of officership or incompatible with same, by decision of a standing military tribunal in peacetime, or by a special tribunal in time of war.

Paragraph 8. An officer who is sentenced by the ordinary or military courts to imprisonment for longer than 2 years, by decision which has become final and is unappealable, shall be submitted to the judgment for which provision is made in Paragraph 7 of this article.

Paragraph 9. The law shall make provision concerning age limits, tenure, and other conditions for transfer of a military public servant to inactive status.

Paragraph 10. The provision in Article 40, Paragraphs 4 and 5, applies to the public servants to which this article refers, and to their pensioners.

Paragraph 11. The provision in Article 7 (VIII), (XII), (XVII), (XVIII), and (XIX) applies to the public servants to which this article refers.

Section IV - The Regions of Brazil

Article 43.

For administrative purposes, the Union may link its various actions within the same geographical and social complex in order to further their development and reduce regional inequalities;

Paragraph 1. Complementary law shall make provisions for the following:

I. Conditions for integrating the developing regions;

II. The composition of the regional bodies that will, pursuant to law, carry out the regional plans that are part of the national economic and social development plans and were approved concurrently with them.

Paragraph 2. Regional incentives shall include such features as the law may provide, to include the following:

I. Equality of tariffs, freight charges, insurance premiums, and other cost and price items for which the government is responsible;

II. Concessional interest rates for the financing of priority activities;

III. Exemptions, reductions, or temporary deferment of federal taxes owed by individuals or legal entities;

IV. Priority attention to the economic and social exploitation of the rivers and bodies of water that have been or could be dammed up, in low-income regions that are subject to periodic droughts.

Paragraph 3. In the areas referred to in Paragraph 2(IV) above, the Union shall encourage the rehabilitation of arid lands and shall cooperate with the small- and medium-scale rural landowners in order to set up sources of water and small-scale irrigation projects on their holdings.

Title IV - Structure of the Branches of Government

Chapter I - The Legislative Branch

Section I - The National Congress

Article 44.

Legislative power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate.

Sole Paragraph. Each legislature shall sit for a term of 4 years.

Article 45.

The Chamber of Deputies is composed of representatives of the people who have been elected, by the proportional system, in each State, Territory, and in the Federal District.

Paragraph 1. The total number of deputies, as well as the representation for each State and for the Federal District, shall be determined by complementary law in proportion to the population, with any adjustments that become necessary being made during the year prior to the elections, so that no unit of the Federation shall have fewer than 8 or more than 70 deputies.

Paragraph 2. Each Territory shall elect four deputies.

Article 46.

The Federal Senate is composed of representatives of the States and of the Federal District, elected according to the majority principle.

Paragraph 1. Each State, as well as the Federal District, shall elect three Senators for a term of office of 8 years.

Paragraph 2. The representation of each State and of the Federal District shall be renewed every 4 years, alternately by one- and two-thirds.

Paragraph 3. Two alternates shall be elected with each senator.

Article 47.

Unless constitutionally provided otherwise, the decisions in each house of Congress and in its committees shall be made by majority of votes and in the presence of an absolute majority of its members.

Section II - Powers of the National Congress

Article 48.

It is the province of the National Congress, with the approval of the President of the Republic—not required under the circumstances specified in Articles 49, 51, and 52—to provide concerning all matters within the sphere of authority of the Union, especially the following:

I. The tax system and the collection and distribution of revenues;

II. Multiyear planning, budget directives, the annual budget, credit transactions, public debt transactions, and issues that must receive full faith and credit;

III. Determination and modification of the manpower strength of the Armed Forces;

IV. National, regional, and sectoral development plans and programs;

V. The boundaries of the nation's territory, airspace, maritime zones, and properties owned by the Union;

VI. The incorporation, subdivision, or dismemberment of areas of the Territories or States, after consultation with the respective legislative Assemblies;

VII. Temporary transfer of the seat of the Federal Government;

VIII. The granting of amnesty;

IX. The administrative and judicial organization, including the Offices of the Government Attorney and of the Public Defender, for the Union and the Territories and the judicial organization, including the Offices of the Government Attorney and of the Public Defender, for the Federal District;

X. Creation, transformation, and abolition of public offices, jobs, and positions;

XI. Creation, structuring, and prerogatives of the cabinet Ministries and the organs of the public administration;

XII. Telecommunications and radio broadcasting;

XIII. Financial, exchange, and monetary matters; financial institutions and their operations;

XIV. Currency, the limits on its issuance, and the size of the federal bonded debt.

Article 49.

The National Congress has exclusive authority to:

I. Make the final decision on international treaties, accords, or acts that entail obligations or burdensome commitments of the nation's assets;

II. Authorize the President of the Republic to declare war, to make peace, and to permit foreign forces to transit the nation's territory or remain therein temporarily, except in instances for which provision is made in complementary law;

III. Authorize the President and the Vice President of the Republic to absent themselves from Brazil, when such absence is to exceed 15 days;

IV. Approve a state of emergency and federal intervention, authorize a state of siege, or suspend any of those measures;

V. Suspend the regulatory acts of the Executive Branch that overstep the bounds of the regulatory authority or the limits of the legislative delegation of power;

VI. Temporarily change the location of its seat;

VII. Determine identical levels of remuneration for the federal deputies and the senators, to be fixed in each legislature for application in the subsequent one, with due regard for the provisions of Articles 150 (II), 153(III), and 153, Paragraph 2(1);

VIII. Determine, for each fiscal year, the remuneration of the President and the Vice President of the Republic and the ministers of state, with due regard for the provisions of Articles 150 (II), 153(III), and 153, Paragraph 2(1);

IX. Conduct an annual review of the accounts rendered by the President of the Republic and consider the reports on the execution of government plans;

X. Supervise and control, directly or through either of its houses, the acts of the Executive Branch, including those of the indirect administration;

XI. See that its legislative authority is preserved as against the regulatory prerogatives of the other Branches;

XII. Review the acts that grant and renew the granting of radio and television broadcasting rights;

XIII. Select two-thirds of the members of the Tribunal of Accounts of the Union;

XIV. Approve initiatives of the Executive Branch regarding nuclear energy activities;

XV. Authorize referenda and convene plebiscites;

XVI. Authorize, on Indian lands, the exploration and exploitation of water resources and the prospecting and mining of mineral resources;

XVII. Approve, in advance, the transfer or concession of public lands having an area in excess of 2,500 hectares.

Article 50.

Either the Chamber of Deputies or the Federal Senate or any of their committees may call upon a minister of state to furnish, in person, information on predetermined matters; failure to appear without adequate justification shall constitute a crime of abuse of public office.

Paragraph 1. Ministers of state may appear before the Federal Senate, the Chamber of Deputies or any of the committees thereof upon their own initiative or by making arrangements with the appropriate presiding officers, in order to make a presentation on matters pertinent to their ministries.

Paragraph 2. The presiding officers of the Chamber of Deputies may forward written requests for information to the ministers of state; refusal to respond or failure to do so within 30 days, or the furnishing of false information, shall constitute a crime of abuse of public office.

Section III - The Chamber of Deputies

Article 51.

The Chamber of Deputies has sole authority to do the following:

I. Authorize, by a vote of two-thirds of its members, the institution of proceedings against the President or the Vice President of the Republic and the ministers of state;

II. Proceed to take possession of the accounts of the President of the Republic, when such accounts are not submitted to the National Congress within 60 days of the opening of the legislative session;

III. Draw up its internal rules;

IV. Provide for the organization, functioning, policing, creation, transformation, and abolition of positions, jobs, and functions within its services, and for the establishment of the respective remuneration, with due regard for the parameters established under the budgetary guidelines law;

V. Elect members of the Council of the Republic, pursuant to Article 39 (VII).

Section IV - The Federal Senate

Article 52.

The Federal Senate has sole authority to do the following:

I. Proceed against and try the President and the Vice President of the Republic for abuses of power; proceed against and try the ministers of state for crimes of the same nature thereto related;

II. Proceed against and try the ministers of the Federal Supreme Court, the Attorney General of the Republic, or the General Counsel of the Union for crimes of abuse of power;

III. Approve, in advance and by secret ballot after hearing arguments in public session, the selection of the following:

(a) Magistrates, in cases for which provision is made in this Constitution;

(b) Ministers on the Tribunal of Accounts of the Union nominated by the President of the Republic;

(c) A Governor of a Territory;

(d) The president and directors of the Central Bank;

(e) The Attorney General of the Republic;

(f) Holders of such other offices as may be determined by law;

IV. Approve, in advance and by secret ballot after hearing arguments in executive session, the selection of chiefs of permanent diplomatic missions;

V. Authorize external operations of a financial nature that are of interest to the Union, the States, the Federal District, the Territories, and the Municipalities;

VI. Determine, by proposal of the President of the Republic, the ceilings on the amount of consolidated debt of the Union, the States, the Federal District, and the Municipalities;

VII. Make provisions concerning the ceilings and the terms of external and internal credit transactions entered into by the Union, the States, the Federal District and the Municipalities, their autonomous entities, and other entities controlled by the federal government;

VIII. Make provisions concerning the ceilings and the conditions for granting the guarantee of the Union on external and internal credit transactions;

IX. Set the ceilings and terms for the amount of bonded debt of the States, the Federal District and the Municipalities;

X. Suspend the execution, in whole or in part, of a law declared unconstitutional by final decision of the Federal Supreme Court;

XI. Approve, by absolute majority expressed through secret ballot, the official dismissal of the Attorney General of the Republic prior to the end of his term of office;

XII. Draw up its internal rules;

XIII. Provide concerning the organization, functioning, policing, creation, transformation, and abolition of positions, jobs, and functions within its services and for the establishment of the respective remuneration, with due regard for the parameters established in the budgetary guidelines law;

XIV. Elect members of the Council of the Republic, pursuant to Article 89(VII).

Sole Paragraph. In cases for which provision is made in Subsections I and II of this Article, the president of the Federal Supreme Court shall serve as president; and the sentence, which may be handed down only by a two-thirds vote of the Federal Senate, shall be limited to forfeiture of the office and disqualification from the exercise of public duties for a period of 8 years, without prejudice to any other judicial penalties that may apply.

Section V - Deputies and Senators

Article 53.

Deputies and senators enjoy inviolability as regards their opinions, statements, and votes.

Paragraph 1. After issuance of their credentials, the members of the National Congress may not be arrested, except in flagrante delicto for a nonbailable crime, nor may they be criminally prosecuted without prior consent of their legislative house.

Paragraph 2. Either the denial of a request for permission to prosecute or the absence of a decision shall serve to suspend the statute of limitations for the duration of the legislator's term of office.

Paragraph 3. In the case of a nonbailable crime for which a legislator was arrested in flagrante delicto, the case file shall be sent within 24 hours to the respective house so that said body may, by vote of a majority of its members taken in secret, decide on imprisonment and whether to authorize the gathering of evidence in preparation for indictment.

Paragraph 4. Deputies and senators are to be brought to trial before the Federal Supreme Court.

Paragraph 5. Deputies and senators shall not be obliged to testify concerning information received or furnished in the course of their official duties, nor concerning persons who confided in them or received information from them.

Paragraph 6. Service in the Armed Forces by a deputy or senator, even if said legislator holds military rank and even in time of war, shall depend upon the prior granting of permission by his legislative house.

Paragraph 7. The immunities of deputies or senators shall continue during a state of siege; they may be suspended only by vote of two-thirds of the members of the respective house in instances of acts committed outside the premises of the Congress that are incompatible with the execution of said measure.

Article 54.

Deputies and senators may not do the following:

I. After issuance of their credentials:

(a) Sign or maintain a contract with a public legal entity, an autonomous entity, a government corporation, a mixed-economy firm, or a company that holds a public service concession unless the contract is drawn up in accordance with standard clauses;

(b) Accept or exercise a remunerated position, function, or employment, even those from which he may be dismissed "ad nutem," in any of the entities mentioned in the preceding subpart;

II. After taking office:

(a) Be the owner, holder of control, or director of a company that enjoys benefits deriving from a contract with a public legal entity, or perform a remunerated function therein;

(b) Hold a post or function from which he may be dismissed "ad nutem" in the entities mentioned in Subsection I(a);

(c) Act as defense attorney in a case in which any of the entities mentioned in Subsection I(a) has an interest;

(d) Hold more than one elected public office or mandate.

Article 55.

The following shall cause a deputy or senator to forfeit his mandate:

I. Infringement of any of the prohibitions mentioned in the previous article;

II. Conduct declared incompatible with parliamentary decorum;

III. Failure, during each legislative period, to attend at least one-third of the regular sessions of the legislative house of which he is a member, unless leave or travel has been authorized by that house;

IV. Loss or suspension of political rights;

V. Decree to such effect, issued by the electoral courts in instances for which provision is made in this Constitution;

VI. Conviction of a crime, providing the verdict has become final and is unappealable.

Paragraph 1. In addition to the cases defined in the internal rules of the legislative house, abuse of the privileges conferred upon a member of the National Congress, or the receipt of improper benefits are hereby deemed incompatible with parliamentary decorum.

Paragraph 2. In the instances of Subsections I, II, and VI of this Article, the decision on the forfeiture of the mandate shall be made by the Chamber of Deputies or the Federal Senate by secret ballot and absolute majority at the instigation of the respective presiding officers or of a political party represented in the National Congress, with ample opportunity for defense being assured.

Paragraph 3. In the cases for which provision is made in Subsections III and V, forfeiture shall be declared by the presiding officers of the respective legislative house, either in the course of their official duties or at the instigation of any of its members, or of a political party represented in the National Congress, with ample opportunity for defense assured.

Article 56.

The following shall not cause a Deputy or Senator to forfeit his mandate:

I. Investiture in any of these offices: minister of state; governor of a Territory; secretary of a State, the Federal District, or a Territory; mayor of a state capital city; or head of a temporary diplomatic mission;

II. Use of leave granted by the respective legislative house for reasons of illness, or leave without pay granted in order to handle a private matter, provided that in the latter case the absence on leave does not exceed 120 days during a single legislative session;

Paragraph 1. The alternate shall be called to serve in the event of vacancy, or investiture in positions provided for in this article, or absence on leave in excess of 120 days.

Paragraph 2. In the event a vacancy arises and there is no alternate, an election shall be held to fill it if more than 15 months still remain in the term of office.

Paragraph 3. In the event of Subsection I, the deputy or senator may opt for the level of remuneration which his mandate entitles him to receive.

Section VI - Meetings

Article 57.

The National Congress shall meet annually in the federal capital from 15 February through 30 June and from 1 August through 15 December.

Paragraph 1. The meetings scheduled for the above dates shall be postponed to the next following business day when they fall on Saturdays, Sundays, or holidays.

Paragraph 2. The legislative session shall not be interrupted without the passage of the budgetary guidelines bill.

Paragraph 3. In addition to other cases for which provision is made in this Constitution, the Chamber of Deputies and the Federal Senate shall meet in joint session in order to:

I. Inaugurate the legislative session;

II. Draw up a common body of regulations and regulate the creation of services common to both Houses;

III. Receive the sworn oath of office from the President and Vice President of the Republic;

IV. Be informed of and make a decision on a veto.

Paragraph 4. Each of the legislative houses shall hold preparatory meetings beginning on 1 February during the first year of the legislative session in order to swear in its members and elect their respective presiding officers; the latter shall serve a term of 2 years and may not be reappointed to the same position in the immediately subsequent election.

Paragraph 5. The President of the Federal Senate shall preside over the National Congress; the other presiding officer positions shall be held, alternately, by those who hold the equivalent positions as presiding officers in the Chamber of Deputies and the Federal Senate.

Paragraph 6. The National Congress shall be convened in special session as follows:

I. By the President of the Federal Senate when a state of emergency or of federal intervention has been decreed, or authorization for a decree of state of siege has been requested, and for the swearing-in and investiture of the President and the Vice President of the Republic;

II. By the President of the Republic, the Presidents of the Chamber of Deputies and the Federal Senate, or upon request by the majority of the members of both Houses, in emergencies or cases of compelling public interest.

Paragraph 7. During a special session, the National Congress shall deliberate only on the subject for which it was convened.

Section VII - Congressional Committees

Article 58.

The National Congress and its houses shall have standing and temporary committees, to be constituted in such manner and with such prerogatives as provided in the regulations of the respective house or in the acts that create them.

Paragraph 1. In constituting the presiding officers of each committee, proportional representation of the parties or parliamentary blocs that participate in the respective house shall be assured, insofar as possible.

Paragraph 2. The following are the duties of the committees as regards the subject matter over which they have jurisdiction:

I. Discuss and vote on a bill that waives the jurisdiction of the Plenary, pursuant to the regulations, unless appealed by one-tenth of the members of the particular House;

II. Hold public hearings with entities of civilian society;

III. Call upon ministers of state to furnish information on matters inherent in their assigned duties;

IV. Receive petitions, claims, representations, or complaints from any person against acts or omissions by public officials or entities;

V. Request testimony from any official or citizen;

VI. Evaluate programs for public works projects and national, regional, and sectoral development plans and issue an opinion thereon.

Paragraph 3. Parliamentary investigatory committees, which shall have investigatory powers such as are properly those of the judicial authorities, in addition to others for which provision may be made in the internal rules of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon request of one-third of their members, in order to determine the facts of a specific circumstance during a specific period of time; their conclusions may, if appropriate, be forwarded to the Office of the Government Attorney so that the offenders may be civilly or criminally prosecuted.

Paragraph 4. While the National Congress is in recess, it shall be represented by a committee elected by its Houses during the final regular session of the legislative period and having such powers as defined in the common rules; its composition shall reproduce, insofar as possible, the proportionality of party representation.

Section VIII - The Legislative Process

Subsection I - General Provision

Article 59.

The legislative process comprises the drafting and enacting of the following:

I. Constitutional amendments;

II. Complementary laws;

III. Ordinary laws;

IV. Delegated laws;

V. Legislative decrees;

VI. Resolutions.

Sole Paragraph. Complementary law shall make provision for the drafting, editing, amendment, and consolidation of the laws.

Subsection II - Constitutional Amendments

Article 60.

The Constitution may be amended upon proposal by the following:

I. A minimum of one-third of the members of the Chamber of Deputies or of the Federal Senate;

II. The President of the Republic;

III. More than half of the legislative assemblies of the units of the Federation, provided that each of them expresses itself by a relative majority of its members.

Paragraph 1. The Constitution may not be amended while a period of federal intervention, state of emergency, or state of siege is in effect.

Paragraph 2. The proposal shall be discussed and voted on in each house of the National Congress in two rounds, and is deemed to have been approved if it obtains, in both houses, three-fifths of the votes of the members thereof.

Paragraph 3. An amendment to the Constitution shall be promulgated by the presiding officers of the Chamber of Deputies and of the Federal Senate, and assigned the appropriate number in the sequence.

Paragraph 4. No proposed amendment that would abolish the following shall be the object of deliberation:

- I. The federative form of government;
- II. Direct, secret, universal, and periodic suffrage;
- III. The separation of powers;
- IV. Individual rights and guarantees.

Paragraph 5. The subject matter of a proposed amendment that has been rejected or deemed as prejudiced may not be the object of a new proposal during the same legislative session.

Subsection III - The Laws

Article 61.

Any member or committee of the Chamber of Deputies, the Federal Senate, or the National Congress—or the President of the Republic, the Federal Supreme Court, the Superior Courts, the Attorney General of the Republic or the citizens—may take the initiative of proposing a complementary or ordinary law, in such manner and cases as provided in this Constitution.

Paragraph 1. Laws intended to accomplish the following may be introduced only by the President of the Republic:

- I. Establish or modify the manpower strength of the Armed Forces;
- II. Make provision concerning:
 - (a) Creation of public positions, functions, or employment in the direct or indirect administration or the autonomous entities, or the increase in the remuneration for same;
 - (b) The administrative and judicial organization, tax and budgetary affairs, public services, and personnel in the administration of the Territories;
 - (c) Public servants of the Union and the Territories, their legal status, appointment to posts, tenure and retirement of civil servants, or the retirement and transfer to inactive status of military public servants;
 - (d) Organization of the Offices of the Government Attorney and the Public Defender of the Union, as well as general rules for the organization of the Offices of Government Attorney and of the Public Defenders in the States, the Federal District, and the Territories;
 - (e) Creation, structuring, and prerogatives of the Ministries and the other bodies in the public administration.

Paragraph 2. Popular initiative may be exercised by submitting to the Chamber of Deputies a bill that has been endorsed by at least one percent of the nation's electorate, distributed among at least five States, with not less than three-tenths of one percent of the voters of each of them.

Article 62.

In important and urgent cases, the President of the Republic may adopt provisional measures that have the force of law; however, he must immediately submit them to the National Congress which, if it is in recess, shall be convened in special session in order to meet within 5 days.

Sole Paragraph. Provisional measures shall lose their effectiveness as of the date of publication if they are not converted into law within 30 days from the date of their publication, and the National Congress shall make provisions to regulate any legal relationships that may stem from such measures.

Article 63.

No increase in the expenditures provided for in the following shall be permitted:

- I. Bills that can be introduced only by the President of the Republic, except as provided in Article 166, Paragraphs 3 and 4;
- II. Bills concerning the organization of the administrative services of the Chamber of Deputies, the Federal Senate, the Federal Courts, and the Office of Government Attorney.

Article 64.

Debate and voting on the bills introduced by the President of the Republic, the Federal Supreme Court, and the Superior Courts shall begin in the Chamber of Deputies.

Paragraph 1. The President of the Republic may request that bills introduced by his office be considered on an urgent basis.

Paragraph 2. If in the case of the previous paragraph, the Chamber of Deputies and the Federal Senate do not, each of them in succession, express an opinion on the proposal within a maximum of 45 days, it shall be placed on the agenda, thereby suspending deliberations on the other matters, so that the voting may be completed.

Paragraph 3. Consideration by the Chamber of Deputies of amendments made by the Federal Senate shall take place within 10 days; as regards the rest, the provision in the previous paragraph of this article shall be observed.

Paragraph 4. The intervals specified in paragraph 2 above shall not run during periods of congressional recess, nor do they apply to draft codes.

Article 65.

A bill passed by one house shall be reviewed by the other, in a single round of debate and voting, and either sent on for presidential sanction or promulgation if the reviewing house passes it, or shelved if it rejects it.

Sole Paragraph. If a bill is amended, it shall be returned to the house where it originated.

Article 66.

The house where the voting was completed shall send the bill to the President of the Republic who, upon consent, shall sanction it.

Paragraph 1. If the President of the Republic considers the bill to be wholly or partially unconstitutional or contrary to the public interest, he shall veto it in its entirety or in part within 15 working days from the date of receipt and shall, within 48 hours, notify the president of the Federal Senate of the reasons for the veto.

Paragraph 2. A partial veto must cover the full text of an article, paragraph, subsection, or subpart.

Paragraph 3. After the 15-day period referred to in Paragraph 1 has elapsed, inaction on the part of the President of the Republic shall imply sanction.

Paragraph 4. A veto shall be considered in joint session within 30 days of receipt and may be overridden only by the vote of the absolute majority of the deputies and senators, conducted by secret ballot.

Paragraph 5. If the veto is overridden, the bill shall be sent to the President of the Republic for promulgation.

Paragraph 6. If the deadline established in Paragraph 4 expires without a decision having been made, the veto shall be immediately placed on the agenda for the session, thereby halting consideration on other proposals except those referred to in the sole paragraph of Article 62, until a final vote has been taken.

Paragraph 7. If in the events of Paragraphs 3 and 5 the law is not promulgated within 48 hours by the President of the Republic, the president of the Senate shall promulgate it, and if he does not do so within a similar interval, it shall be the duty of the vice president of the senate to do so.

Article 67.

The subject matter of a bill that was rejected may only become the object of a new bill introduced during the same legislative session if so proposed by an absolute majority of the members of either House of the National Congress.

Article 68.

Delegated laws shall be drafted by the President of the Republic, who shall ask the National Congress to delegate the authority.

Paragraph 1. Acts falling within the exclusive sphere of authority of the National Congress and those within the special spheres of authority of the Chamber of Deputies or the Federal Senate, or matters reserved for complementary law, may not be the object of delegation, nor may the authority to legislate on the following topics be delegated:

I. The organization of the Judicial Branch and the Office of the Government Attorney, the career ladder, and the guarantees afforded their members;

II. Nationality, citizenship, individual rights, political and electoral rights;

III. Multiyear plans, budgetary guidelines, and budgets.

Paragraph 2. The delegation [of lawmaking authority] to the President shall take the form of a resolution by the National Congress, which shall specify the content thereof and the terms under which it is to be exercised.

Paragraph 3. If the resolution determines that the bill shall be considered by the National Congress, this body shall do so in a single vote, and no amendment may be introduced.

Article 69.

Complementary laws shall be approved by absolute majority.

Section IX - Accounting, Financial, and Budgetary Control

Article 70.

Monitoring of the accounts, finances, budgets, operations, and property of the Union and the entities of the direct and indirect administration in terms of legality, legitimacy, economy, application of subsidies, and waiver of revenues shall be exercised by the National Congress through an external control mechanism and by the internal control system of each branch of government.

Sole Paragraph. Any individual or public entity which uses, collects, keeps, manages, or administers monies, assets, and securities that belong to the government or for which the Union is responsible, or who assumes, in the name of the Union, obligations of a monetary nature, shall render an accounting for same.

Article 71.

The external control function for which the National Congress is responsible shall be exercised with assistance from the Tribunal of Accounts of the Union, which has the authority to:

I. Review the accounts rendered annually by the President of the Republic, by means of a preliminary opinion to be prepared within 60 days of receiving said accounts;

II. Pass judgment on the accounts of the officers and others responsible for public monies, assets, and securities belonging to the direct and indirect administration, which includes foundations and companies maintained by the Federal Government, and the accounts of those who may have brought about a forfeiture, loss, or other irregularity that results in a loss to the public treasury;

III. Review, for the record, the legality of the acts by which personnel were hired for any reason in the direct or indirect administration, including foundations instituted and maintained by the Government, except appointments to posts that are filled on a temporary basis; such review also applies to awards of retirement pensions and allowances, except for subsequent improvements therein that do not alter the legal basis of the act of concession.

IV. Conduct, on its own initiative or that of the Chamber of Deputies, the Federal Senate, or a technical or investigatory committee, inspections and audits of an accounting, financial, budgetary, operational, and property nature within the administrative units of the Legislative, Executive, and Judiciary Branches and at other entities mentioned in subsection II of this article.

V. Supervise the domestic accounts of supranational companies in whose capital the Union has a share, directly or indirectly, pursuant to the treaty that established the company;

VI. Supervise the application of any and all funds transferred by the Union under a convention, accord, arrangement or similar means to a State, the Federal District, or a Municipality;

VII. Furnish the information requested by the National Congress or either of its Houses, or by any of their respective committees, concerning the accounting, financial, budgetary, operational, and property supervision function and the results of the audits and inspections conducted;

VIII. In event of illegalities in expenses or irregularities in the accounts, impose against those liable the penalties for which provision is made by law, such penalties to include a fine proportional to the damage caused to the public treasury;

IX. Determine the deadline by which an agency or entity must adopt measures necessary to bring it into strict compliance with the law, if illegality is found;

X. If not heeded, suspend the execution of the contested act and notify the Chamber of Deputies and the Federal Senate of that decision;

XI. Report to the appropriate branch of government concerning any irregularities or abuses that are found.

Paragraph 1. In the case of a contract, the suspension order shall be adopted directly by the National Congress, which shall immediately request the Executive Branch to take the appropriate measures.

Paragraph 2. If the National Congress or the Executive Branch does not take the measures provided for in Paragraph 1 above within 90 days, the Tribunal shall make a decision on the matter.

Paragraph 3. Decisions by the Tribunal that result in imputation of a debt or a fine shall have the force of an executory right.

Paragraph 4. The Tribunal shall send quarterly and annual reports on its activities to the National Congress.

Article 72.

The joint standing committee referred to in Article 166, Paragraph 1 may, in the presence of indications of unauthorized expenses, even in the form of unplanned investments or subsidies that have not been approved, request the responsible government official to furnish the necessary explanations within a period of 5 days.

Paragraph 1. If explanations are not furnished, or are provided but considered insufficient, the committee shall ask the Tribunal for a formal statement of its conclusions on the matter within a period of not more than 30 days.

Paragraph 2. In the event the Tribunal finds an expenditure to be irregular, the committee shall, if it believes that the expenditure may cause irreparable damage or grave injury to the public economy, propose to the National Congress that it be suspended.

Article 73.

The Tribunal of Accounts of the Union, composed of nine ministers, has its headquarters in the Federal District and its own staff and jurisdiction throughout the national territory and, when appropriate, exercises the prerogatives provided for in Article 96.

Paragraph 1. The ministers of the Tribunal of Accounts of the Union shall be appointed from among Brazilians who meet the following requirements:

- I. At least 35 but less than 65 years of age;
- II. Good moral character and unblemished reputation;
- III. Generally recognized ability in the fields of law, accounting, economics and finance, or public administration;
- IV. More than 10 years' experience performing duties or regularly engaging in professional activity that requires the kinds of knowledge mentioned in Subsection III of this article.

Paragraph 2. The ministers on the Tribunal of Accounts of the Union shall be chosen as follows:

- I. One-third by the President of the Republic, with the consent of the Federal Senate; two of them shall be chosen, alternately, from among auditors and members of the Office of Government Attorney on the Tribunal whose names appear on the list of three names furnished by the Tribunal drawn up according to criteria of seniority and merit;
- II. Two-thirds by the National Congress;

Paragraph 3. The ministers on the Tribunal of Accounts of the Union shall have the same guarantees, privileges, impediments, salaries, and benefits as the ministers on the Superior Court of Justice and shall be able to retire with the benefits of office only when they have exercised same on a regular basis for more than 5 years.

Paragraph 4. An auditor, when acting in the place of a minister, shall have the same guarantees and impediments as his principal and, when exercising the other assigned judicial duties, the same guarantees and impediments as a judge on the Federal Regional Court.

Article 74.

The Legislative, Executive, and Judicial Branches shall jointly maintain an integrated system for internal control, which shall have the following purposes:

- I. Evaluation of the fulfillment of the goals set forth in the multiyear plan, the execution of government programs, and the budgets of the Union;

II. Attesting to the legality and evaluating the results in terms of effectiveness and efficiency of the budgetary, financial, and property management functions performed by entities of the federal administration, as well as the application of public funds by private entities;

III. Exercise control over credit operations, and personal sureties and guarantees, as well as the rights and assets of the Union;

IV. Support the external control body in the exercise of its institutional mission;

Paragraph 1. Those responsible for the internal control function shall, when they become aware of any irregularity or illegality, inform the Tribunal of Accounts of the Union, under penalty of being held jointly liable.

Paragraph 2. Any citizen, political party, association, or labor union may legitimately denounce any irregularities or illegalities to the Tribunal of Accounts of the Union pursuant to law.

Article 75.

The rules established in this section apply, insofar as appropriate, to the organization, composition, and supervision of and by the Tribunals of Accounts of the States and the Federal District, as well as the Tribunals and Councils of Accounts of the Municipalities.

Sole Paragraph. The state constitutions shall make provisions concerning their respective Tribunals of Accounts, which shall be composed of seven counselors.

Chapter II - The Executive Branch

Section I - The President and Vice President of the Republic

Article 76.

The power of the Executive Branch is exercised by the President of the Republic, assisted by the Ministers of State.

Article 77.

Elections for the President and the Vice President of the Republic shall be held simultaneously, 90 days prior to the end of the current presidential term of office.

Paragraph 1. Election of the President of the Republic shall imply that of the Vice Presidential candidate registered with him.

Paragraph 2. The candidate who, being registered by a political party, obtains the absolute majority of votes, blank and invalid ballots not having been counted, shall be deemed to have been elected president.

Paragraph 3. If no candidate attains an absolute majority in the first vote another election shall be held, within not more than 20 days following the announcement of the results of the first, between the two candidates who received the highest number of votes; the one who obtains the majority of the valid votes shall be deemed to have been elected.

Paragraph 4. If one of the candidates dies, withdraws, or becomes legally impeded before the runoff election is held, the candidate who received the most votes from among the remaining ones shall be called upon to run.

Paragraph 5. If, in the events of the previous paragraphs, more than one candidate ranks second with an equal number of votes, the older one shall become eligible to compete [in the runoff election].

Article 78.

The President and the Vice President of the Republic shall take office during a session of the National Congress and shall swear to maintain, defend, and carry out the Constitution, observe the laws, promote the general welfare of the Brazilian people, and uphold the union, integrity, and independence of Brazil.

Sole Paragraph. If, after 10 days have elapsed since the date set for the inauguration, the President or the Vice President has still not taken office and no reasons of force majeure apply, the office shall be declared vacant.

Article 79.

The Vice President shall substitute for the President when he is unable to serve and shall succeed him in the event of a vacancy.

Sole Paragraph. The Vice President of the Republic, in addition to other duties that may be assigned to him by complementary law, shall assist the President whenever called upon by him to perform special missions.

Article 80.

In the event both the President and Vice President are unable to serve or the respective posts are vacant, the following shall be called upon, in succession, to exercise the office of President: the president of the Chamber of Deputies, the president of the Federal Senate, and the president of the Supreme Court.

Article 81.

If the offices of both President and Vice President of the Republic become vacant, an election shall be held 90 days following the opening of the last vacancy.

Paragraph 1. In the event of a vacancy occurring during the final 2 years of a presidential term, the election for both offices shall be held by the National Congress and pursuant to law, 30 days following the date of the last vacancy.

Paragraph 2. In either of these events, those elected shall complete the term of their predecessors.

Article 82.

The term of office of the President of the Republic is 5 years, beginning on 1 January of the year following his election; re-election for the subsequent term is prohibited.

Article 83.

Neither the President nor the Vice President of the Republic may absent himself from Brazil for a period of more than 15 days without permission of the National Congress, under penalty of forfeiting the office.

Section II - Powers of the President of the Republic

Article 84.

The President of the Republic has exclusive authority to:

- I. Appoint and dismiss the ministers of state;
- II. Exercise, with the assistance of the ministers of state, the highest level of leadership of the federal administration;
- III. Initiate the legislative process in the manner and cases for which provision is made in this Constitution;
- IV. Sanction, promulgate, and order publication of the laws, as well as issue decrees and regulations for the faithful execution thereof;
- V. Veto bills of law, either wholly or in part;
- VI. Make provision concerning the organization and the functioning of the federal administration, pursuant to law;
- VII. Maintain relations with foreign States and accredit their diplomatic representatives;
- VIII. Enter into international treaties, conventions, and acts, subject to ratification by the National Congress;
- IX. Decree a state of emergency or state of siege;
- X. Decree and implement federal intervention;
- XI. Send a message and plan of government to the National Congress on the occasion of the opening of the legislative session, reporting on the state of the Union and requesting such measures as he may deem necessary;

XII. Grant pardons and commute sentences after hearing, if necessary, from the organs instituted by law;

XIII. Serve as supreme commander of the Armed Forces, promote the general officers thereof, and appoint them to the posts that are their exclusive province;

XIV. Appoint, after approval by the Federal Senate, the ministers of the Federal Supreme Court and the Superior Courts, the governors of the Territories, the Attorney General of the Republic, the president and the directors of the Central Bank, and other employees when so determined by law;

XV. Appoint, with due regard for the provisions of Article 73, the ministers of the Tribunal of Accounts of the Union;

XVI. Appoint the magistrates, in cases for which provision is made in this Constitution, and the General Counsel of the Union;

XVII. Appoint members of the Council of the Republic, pursuant to Article 89 (VII);

XVIII. Convene and preside over the Council of the Republic and the National Defense Council;

XIX. Declare war, in the event of foreign aggression and when authorized by the National Congress, or when said aggression occurred in the interval between legislative sessions, when ratified by the Congress; also, under the same conditions, decree total or partial national mobilization;

XX. Make peace, either authorized by or with the subsequent ratification by the National Congress;

XXI. Confer decorations and honorific distinctions;

XXII. In cases provided for by complementary law, permit foreign forces to transit the national territory or temporarily remain therein;

XXIII. Send the National Congress the multiyear plan, the budgetary guidelines bill, and the budgetary proposals for which provision is made in this Constitution;

XXIV. Annually render to the National Congress the accounts for the previous fiscal year, within 60 days following the opening of the legislative session;

XXV. Create and abolish federal public offices, pursuant to law;

XXVI. Publish provisional measures that have the force of law pursuant to Article 62;

XXVII. Exercise other prerogatives for which provision is made in this Constitution.

Sole Paragraph. The President of the Republic may delegate the prerogatives mentioned in Subsections VI, XII, and XXV (first part) of this Article to the ministers of state, the attorney general of the Republic, or the general counsel of the Union; such persons shall observe the limits outlined in the respective delegations of authority.

Section III - Responsibilities of the President of the Republic

Article 85.

Acts by the President of the Republic that pose a threat to the federal constitution, and especially against the following, constitute crimes of abuse of power:

I. The existence of the Union;

II. The free exercise of the powers of the legislative and judicial branches and the power of the Office of Attorney General, or the constitutional powers of the units of the Federation;

III. The exercise of the political, individual, and social rights;

IV. The internal security of Brazil;

V. Probity in administration;

VI. The budgetary law;

VII. The fulfillment of the laws and judicial decisions;

Sole Paragraph. Said crimes shall be defined in special law, which shall establish the rules under which they are to be tried and judged.

Article 86.

If the President of the Republic has been formally charged by two-thirds of the Chamber of Deputies, he shall be tried before the Federal Supreme Court for common criminal offenses or before the Federal Senate for crimes of abuse of power.

Paragraph 1. The President shall be temporarily suspended from duty in the following events:

I. In common criminal offenses, if the Federal Supreme Court agrees to consider a charge or criminal complaint;

II. In crimes of abuse of power, following the institution of proceedings by the Federal Senate;

Paragraph 2. If after 180 days have elapsed the trial has not yet been concluded, the President's suspension from duty shall end, without prejudice to the normal course of the proceedings.

Paragraph 3. In common offenses, the President of the Republic shall not be subject to imprisonment until such time as a verdict of conviction is issued;

Paragraph 4. The President of the Republic may not, during his term of office, be held liable for acts outside the scope of his duties.

Section IV - The Ministers of State

Article 87.

The ministers of state shall be selected from among Brazilians who have attained the age of 25 and have the use of their political rights.

Sole Paragraph. The ministers of state have the authority to do the following, in addition to other prerogatives established in this Constitution and in the law:

I. Exercise guidance, coordination, and supervision over the agencies and entities of the federal administration in the areas of their competence, and ratify the acts and decrees signed by the President of the Republic;

II. Issue instructions for the execution of the laws, decrees, and regulations;

III. Submit to the President of the Republic an annual report of the performance of their respective Ministries;

IV. Take actions pertinent to the prerogatives conferred upon them or delegated by the President of the Republic.

Article 88.

The law shall make provision for the creation, structure, and prerogatives of the Ministries.

Section V - The Council of the Republic and the National Defense Council

Subsection I - The Council of the Republic

Article 89.

The Council of the Republic is the highest-level consultative body available to the President of the Republic; the following persons participate thereon:

I. The Vice President of the Republic;

II. The president of the Chamber of Deputies;

III. The president of the Federal Senate;

IV. The majority and minority leaders of the Chamber of Deputies;

V. The majority and minority leaders of the Federal Senate;

VI. The minister of justice;

VII. Six native-born Brazilian citizens who have attained the age of 35; two of them appointed by the President of the Republic, two elected by the Federal Senate, and two elected by the Chamber of Deputies, all for a term of 3 years and prohibited from serving a subsequent term.

Article 90.

The Council of the Republic has authority to make declarations on the following:

I. Federal intervention, the state of emergency, and the state of siege;

II. Issues of significance for the stability of the democratic institutions:

Paragraph 1. The President of the Republic may call upon a minister of state to participate in a meeting of the Council when a matter related to his respective ministry is on the agenda.

Paragraph 2. The law shall regulate the organization and functioning of the Council of the Republic.

Subsection II - The National Defense Council

Article 91.

The National Defense Council is the consultative body of the President of the Republic in matters related to national sovereignty and the defense of the democratic State; the following participate on this Council as charter members:

I. The Vice President of the Republic;

II. The president of the Chamber of Deputies;

III. The president of the Federal Senate;

IV. The minister of justice;

V. The military ministers;

VI. The minister of foreign relations;

VII. The minister of planning.

Paragraph 1. The National Defense Council has authority to:

I. Express an opinion in instances of declaration of war and the celebration of peace, pursuant to this Constitution;

II. Express an opinion on the decreeing of a state of emergency, state of siege, or federal intervention;

III. Propose the criteria and conditions for the use of areas that are vital to the security of the national territory and express an opinion on their continued use, especially in the strip along the borders, and on matters related to the conservation and exploitation of natural resources of any kind;

IV. Study, propose, and monitor the progress of initiatives necessary to guarantee national independence and the defense of the democratic State.

Paragraph 2. The law shall regulate the organization and functioning of the National Defense Council.

Chapter III - The Judicial Branch

Section I - General Provisions

Article 92.

The following are the organs of the Judicial Branch:

- I. The Federal Supreme Court;
- II. The Superior Court of Justice³;
- III. The Federal Regional Courts and the federal judges;
- IV. The labor tribunals and courts;
- V. The electoral tribunals and courts;
- VI. The military tribunals and courts;
- VII. The courts and judges of the States, the Federal District, and the Territories.

Sole Paragraph. The Federal Supreme Court and the Superior Courts have their seats in the Federal Capital and have jurisdiction throughout the national territory.

Article 93.

Upon initiative of the Federal Supreme Court, provision shall be made in complementary law for the statutes by which the magistracy shall be governed, with due regard for the following principles:

I. Entry into the career service, the initial position in which being that of acting judge, shall be gained through a public competition based on examinations and credentials, with participation by the Brazilian Bar Association in all the stages thereof; the order of classification shall be followed in the appointment process;

II. Promotion from one level to another within the hierarchy of the judicial districts [between "entrancias"] shall be awarded, alternately on the basis of seniority and merit, with due regard for the following rules:

(a) Promotion of a judge whose name appears on the merit list three times consecutively or five times intermittently is mandatory;

(b) Promotion of a judge on the basis of merit presupposes 2 years' service at the respective level and ranking in the top 20 percent of the seniority list for that level, unless no one who meets these requirements wishes to fill the vacant position;

(c) Verification of merit using the criteria of dispatch and trustworthiness in the exercise of the jurisdiction, and consideration of whether the candidate has attended and profited by recognized professional skills improvement courses;

(d) In determining seniority, the court may only reject a more senior judge by vote of two-thirds of its members conducted according to special procedures, repeating the vote until a decision on the nomination has been made;

III. Access to the appellate courts shall be gained alternately on the bases of seniority and merit, determined at the highest level in the district hierarchy, or at a court of limited jurisdiction ["Tribunal de Alcada"] when the issue is promotion to the Court of Justice,⁴ according to Subpart II above and the class of origin;

IV. Official courses shall be offered to prepare and perfect the professional skills of magistrates as requisites for entering and being promoted within the career ladder.

V. The salaries of the magistrates shall be determined in such a way that the difference from one category to the other on the career ladder does not exceed 10 percent, and on no account may they exceed those of the ministers on the Federal Supreme Court;

VI. Retirement at full pension is mandatory at age 70 or in cases of disability; it is optional after 30 years of service following 5 years of continuous service in the judiciary;

VII. A sitting judge shall reside in the district in which he serves;

VIII. The act through which a magistrate is removed, placed on the available list, or retired in the public interest shall be based on a decision made by vote of two-thirds of the respective court, with ample opportunity for defense assured;

IX. All judgments by the organs of the Judicial Branch shall be published and all decisions must be justified, under penalty of annulment; the law may, if the public interest so requires, limit the presence at certain acts to the parties themselves and their attorneys, or to the attorneys alone;

X. Administrative decisions by the courts shall be justified, and disciplinary decisions shall be made by vote of the absolute majority of their members;

XI. In courts that have more than 25 judges, a special body may be constituted, having at least 11 but no more than 25 members, to exercise the administrative and jurisdictional prerogatives that are within the sphere of authority of the full court.

Article 94.

One-fifth of the positions on the Federal Regional Courts, the state appellate courts, and the appellate courts of the Federal District and the Territories shall be filled by members of the Office of the Government Attorney who have more than 10 years of career service, and by lawyers of recognized legal knowledge and unblemished reputation who have more than 10 years of continuous professional activity, and who appear on the list of six names submitted by the entities that represent the respective classes.

Sole Paragraph. After the nominations have been received, the court shall draw up a list of three names and send it to the Executive Branch which shall, within the next 20 days, select one of the individuals on that list for appointment.

Article 95.

Judges enjoy the following guarantees:

I. Life tenure which, at the first instance level, shall only be acquired after 2 years in office; loss of the position during this period is dependent upon a decision by the court with which the judge is associated and, in other cases, on a court decision that has become final and unappealable;

II. Nonsusceptibility to administrative dismissal, except for reasons of public interest pursuant to Article 93 (VIII);

III. Irreducibility of salaries, the provisions of Article 37(XI), 150(II), 153(III), and 153, paragraph 2(I) having been observed as regards remuneration;

Sole Paragraph. Judges are forbidden to:

I. Exercise another position or function, even while in available status, other than in the magistracy;

II. Receive, in any way or under any pretext, court costs or a share in any proceedings;

III. Engage in partisan political activity.

Article 96.

The following are the exclusive spheres of authority for certain organs of the Judicial Branch:

I. The appellate courts ["tribunais"]:

(a) Elect their leadership bodies and draw up their internal rules, in observance of the rules of procedure and the procedural guarantees of the parties, making provisions concerning the spheres of jurisdiction and functioning of the respective jurisdictional and administrative bodies;

(b) Organize their secretariats and auxiliary services and those of the judges associated with them; oversee the correction of errors and remedying of abuses;

(c) Fill, in the manner for which provision is made in this Constitution, the career judge positions in the respective geographical jurisdiction;

(d) Suggest the creation of new judicial districts ["varas"];

(e) Fill, by public competition based on examination or by examination and credentials, the provision in the sole paragraph of Article 169 being observed, the positions necessary to the administration of justice, except positions of confidence so defined in the law;

(f) Grant leave, vacation time, and other absences to their members and to the judges and employees immediately associated with them;

II. The Federal Supreme Court, the Superior Courts, and the Courts of Justice have authority to propose the following to their respective Judicial Branch, the provision in Article 169 being observed:

(a) Change in the number of members on the lower courts;

(b) Creation or abolition of positions and the setting of salaries for their members and judges, including those of lower courts if any, and for the auxiliary services and the courts associated with them;

(c) Creation or abolition of lower courts;

(d) Change in the organization and division of the judiciary;

III. The Courts of Justice have authority to try state judges and the judges of the Federal District and the Territories, as well as the members of the Office of the Government Attorney, for common crimes and crimes of abuse of power, except for matters within the competence of the electoral courts.

Article 97.

Only by absolute majority vote of their members or the members of the respective special body may the appellate courts declare a law or Government normative act unconstitutional.

Article 98.

The Union, the Federal District, and the Territories and the States shall create the following:

I. Special courts staffed by judges of law, or by judges of law and lay judges, with authority to handle conciliation, trial, and execution of the less complex civil cases and criminal violations of less offensive potential, in oral and very summary proceedings; in instances for which provision is made in law, panels of first-instance judges may handle compromises and hear appeals in these courts;

II. Justices of the peace, remunerated, being citizens elected by direct, universal, and secret balloting for a term of 4 years with authority pursuant to law to perform marriages and verify qualifications procedures, either in the course of official duties or as the result of a challenge presented, and to exercise conciliatory authority when not of a jurisdictional nature, as well as other duties as provided in legislation;

Article 99.

The Judicial Branch is assured of administrative and financial authority.

Paragraph 1. The appellate courts shall draft their budgetary proposals within the stipulated limits, jointly with the other branches of government, in the budgetary guidelines law.

Paragraph 2. The forwarding of the proposal, after the other interested appellate courts have been consulted, is the province of the following:

I. In the context of the Union, the presidents of the Federal Supreme Court and the Superior Courts, with the approval of the respective appellate courts;

II. In the context of the States and in the Federal District and the Territories, the presidents of the Courts of Justice, with the approval of the respective courts.

Article 100.

With the exception of debts that are in the nature of support payments, the payments owed by the federal, state, or municipal treasury by virtue of a court sentence shall be made exclusively in the chronological order in which the requisitions are presented and against the account of the respective credits; the designation of individual cases or persons in the budgetary appropriations and in the additional credits opened for this purpose is prohibited.

Paragraph 1. It is mandatory that the budgets of public entities include the appropriations necessary for the payment of the debts of these entities as recorded in court requisitions submitted not later than 1 July, the date on which the values of such payments are to be updated, the payment shall be made not later than the end of the following fiscal year;

Paragraph 2. Budgetary appropriations and any credits that are opened shall be consigned to the Judicial Branch and the respective amounts thereof shall be delivered to the appropriate office; the chief judge of the court that handed down the executing decision has authority to order the payment, depending on the availability of funds on deposit and to authorize, upon request of the creditor and only in a case where his right of precedence is being ignored, attachment of a quantity necessary to meet the debt.

Section II - The Federal Supreme Court

Article 101.

The Federal Supreme Court is composed of 11 ministers, chosen from among citizens who have attained the age of 35 but are less than 65 years of age, who have an outstanding knowledge of law and an unblemished reputation.

Sole Paragraph. The ministers on the Federal Supreme Court shall be appointed by the President of the Republic after the choices have been approved by the absolute majority of the Federal Senate.

Article 102.

The Federal Supreme Court has paramount authority to safeguard the Constitution, and may:

I. Proceed against and adjudicate the following, in original jurisdiction:

(a) A direct action alleging unconstitutionality of a federal or state law or normative act;

(b) For common criminal offenses, the President of the Republic, the Vice President, the members of the National Congress, its own ministers, and the attorney general of the Republic;

(c) For common criminal offenses and for crimes of abuse of power, the ministers of state, except as provided in Article 51(I), the members of the Superior Courts, members of the Tribunal of Accounts of the Union, and the chiefs of permanent diplomatic mission;

(d) Habeas corpus, when the person being restrained is any of the persons referred to in the previous subparts; also, writs of mandamus and habeas data against acts of the President of the Republic, the presiding officers of

the Chamber of Deputies and the Federal Senate, the Tribunal of Accounts of the Union, the attorney general of the Republic, and the Federal Supreme Court itself;

(e) Litigation between a foreign state or international body and the Union, a State, the Federal District, or a Territory;

(f) Causes and conflicts between the Union and the States, the Union and the Federal District, or between any of these, including the entities of their respective indirect administrations;

(g) Extradition requested by a foreign state;

(h) Ratification of foreign court sentences and the granting of the exequatur on letters rogatory, powers which may be conferred, by the internal rules, upon the court's president;

(i) Habeas corpus, when the party exercising or suffering restraint is a court, authority, or official whose acts are directly subject to the jurisdiction of the Federal Supreme Court, or if the issue is a crime that is subject to exclusive Supreme Court jurisdiction;

(j) Criminal review, and rescissory actions against its own decisions;

(l)⁵Claims challenging its jurisdiction and authority to see that its decisions are implemented;

(m) Execution of sentence in causes over which it has original jurisdiction, the delegation of prerogatives for the practice of procedural acts being permitted;

(n) An action in which all the members of the magistracy have a direct or indirect interest and in which more than half of the members of the court of origin are barred or directly or indirectly interested;

(o) Conflicts of jurisdiction between the Superior Tribunal of Justice and any other courts, among Superior Tribunals, or between these and any other tribunal;

(p) A petition for a precautionary measure in direct actions alleging unconstitutionality;

(q) A writ of injunction, when the drafting of the regulatory rule is a prerogative of the President of the Republic, the National Congress, the Chamber of Deputies, the Federal Senate, the presiding officers of one of those legislative houses, the Tribunal of Accounts of the Union, one of the Superior Tribunals, or the Federal Supreme Court itself;

II. Adjudicate the following, on ordinary appeal:

(a) Habeas corpus, writs of mandamus, habeas data, and writs of injunction when decided in exclusive jurisdiction by the Superior Courts, if the decision was to disallow;

(b) Political crimes;

III. Adjudicate, on extraordinary appeal, causes that were decided in a single or final instance, when the decision being appealed:

(a) Conflicts with a provision of this Constitution;

(b) Declares the unconstitutionality of a federal treaty or law;

(c) Rules as valid a law or act of local government that has been challenged in light of this Constitution;

Sole Paragraph. An allegation of noncompliance with a fundamental precept deriving from this Constitution shall be considered by the Federal Supreme Court, pursuant to law.

Article 103.

The following may institute an action alleging unconstitutionality:

I. The President of the Republic;

II. The presiding officers of the Federal Senate;

III. The presiding officers of the Chamber of Deputies;

IV. The presiding officers of a legislative assembly;

V. The governor of a State;

VI. The attorney general of the Republic;

VII. The Federal Council of the Brazilian Bar Association;

VIII. A political party that is represented in the National Congress;

IX. A labor union federation or entity representing a certain occupational class, provided such body is national in scope;

Paragraph 1. The Attorney General of the Republic shall be consulted in advance regarding actions alleging unconstitutionality and in all proceedings within the jurisdiction of the Federal Supreme Court.

Paragraph 2. If unconstitutionality is declared because of the omission of a measure that would lend force to a constitutional rule, the appropriate branch of government shall be informed of this circumstance so that it may adopt the necessary measures and, in the case of an administrative organ, do so within 30 days;

Paragraph 3. When the Federal Supreme Court considers the unconstitutionality, in theory, of a legal rule or normative act, it shall first summon the General Counsel of the Union, which shall defend the challenged act or text.

Section III - The Superior Court of Justice

Article 104.

The Superior Court of Justice is composed of at least 33 ministers.

Sole Paragraph. The ministers on the Superior Court of Justice shall be appointed by the President of the Republic from among Brazilians who have attained the age of 35 but are under 65 years of age and have outstanding legal knowledge and an unblemished reputation, after the choice has been approved by the Federal Senate, and as follows:

I. One-third shall be chosen from among judges of the Federal Regional Courts, and one-third from among appellate court judges ["desembargadores"] serving on the Courts of Justice, nominated on a list of three names prepared by the Superior Court of Justice itself;

II. One-third, in equal parts, from among lawyers and members of the federal, state, Federal District and Territorial Offices of the Government Attorney, alternately, nominated as provided in Article 94.

Article 105.

The Superior Court of Justice has authority to:

I. Proceed against and adjudicate the following, in original jurisdiction:

(a) For common crimes, the governors of the States and the Federal District and, for crimes of abuse of power, the appellate court judges on Courts of Justice of the States and the Federal Districts, the members of the Tribunals of Accounts of the States and the Federal District, the members of the Federal Regional Courts, the regional electoral and labor courts, the members of the Councils or Tribunals of Accounts of the Municipalities and those of the Office of the Government Attorney of the Union who officiate before appellate courts;

(b) Writs of mandamus and habeas data against acts of a minister of state or of the Tribunal itself;

(c) Habeas corpus when the party exercising or suffering restraint is any of the persons mentioned in Subpart (a), or when the coercing party is a minister of state, except for matters within the competence of the electoral courts;

(d) Conflicts of jurisdiction between any courts, except as provided in Article 102(I)(o), as well as between a court and judges not associated with it, and among judges associated with different courts;

(e) Criminal review, and rescissory actions against its own decisions;

(f) Claims challenging its jurisdiction and authority to see that its decisions are implemented;

(g) Conflicts of prerogatives between administrative and judiciary authorities of the Union, or between the judiciary authorities of one State and the administrative authorities of another or of the Federal District, or between those of the latter and the Union;

(h) A writ of injunction, when the drafting of the regulatory rule is a prerogative of an organ, entity, or authority in the federal direct or indirect administration, except cases that fall within the jurisdiction of the Federal Supreme Court, the military justice system, the electoral justice system, the labor justice system, or the federal courts;

II. Adjudicate, on ordinary appeal:

(a) Habeas corpus, where the decision was made in exclusive or final jurisdiction by the Federal Regional Courts or by the courts of the States, the Federal District, and the Territories, when the decision was to disallow;

(b) Writs of mandamus, where the decision was made in exclusive jurisdiction by the Federal Regional Courts or by the courts of the States, the Federal District, and the Territories, when the decision was to disallow;

(c) Causes in which one of the parties is a foreign state or an international body and the other a Municipality or an individual resident or domiciled in Brazil;

III. Adjudicate, on special appeal, the causes that were decided in exclusive or final jurisdiction by the Federal Regional courts or by the courts of the States, the Federal District, and the Territories, when the decision being appealed:

(a) Conflicts with a treaty or federal law, or denies force to same;

(b) Rules as valid a law or act of local government that has been challenged in light of federal law;

(c) Gives the federal law an interpretation that differs from one attributed it by another court.

Sole Paragraph. The Council of Federal Justice shall function with the Superior Court of Justice and its duty, pursuant to law, shall be to exercise administrative and budgetary supervision over the first- and second-instances levels of the federal court system.

Section IV - The Federal Regional Courts and the Federal Judges

Article 106.

The following are the component bodies of the federal justice system:

- I. The Federal Regional Courts;
- II. The federal judges.

Article 107.

The Federal Regional Courts are composed of at least seven judges, recruited, when possible, from the respective region and appointed by the President of the Republic from among Brazilians who have attained the age of 35 but are less than 65 years of age, as follows:

- I. One-fifth from among lawyers having more than 10 years of professional practice and members of the federal Office of the Government Attorney having more than 10 years of career service;
- II. The others to be selected by promotion of federal judges having more than 5 years of service, alternately on the bases of seniority and merit;

Sole Paragraph. The law shall regulate the removal or substitution of judges on the Federal Regional Courts and shall determine their jurisdiction and seats.

Article 108.

The Federal Regional Courts have authority to:

- I. Proceed against and adjudicate, in original jurisdiction:
 - (a) Federal judges in the area of their geographical jurisdiction, including judges in the military and labor justice systems, for ordinary crimes and crimes of abuse of power; also the members of the Office of Government Attorney of the Union, except for matters within the jurisdiction of the electoral courts;
 - (b) Criminal review, and rescissory actions against its own decisions or those of federal judges in the region;
 - (c) Writs of mandamus and habeas data against an act of the Federal Regional Court itself or of a federal judge;
 - (d) Habeas corpus when the coercing authority is a federal judge;

(e) Conflicts of jurisdiction between federal judges associated with the Court;

II. Adjudicate, at the appeal level, causes decided by the federal judges and by the state judges who exercise federal authority in the area of their geographical jurisdiction;

Article 109.

Federal judges have authority to proceed against and adjudicate the following:

I. Causes in which the Union, an autonomous entity or a federal public corporation has an interest as plaintiff, defendant, privy, or opponent, except those of bankruptcy and worksite accidents, and those subject to the electoral and labor justice systems;

II. Causes between a foreign state or international body and a Municipality or person domiciled or resident in Brazil;

III. Causes based on a treaty or contract between the Union and a foreign state or international body;

IV. Political crimes and criminal offenses committed to the detriment of the assets, services, or interests of the Union or of its autonomous entities or public corporations, excluding petty offenses and matters within the jurisdiction of the military and electoral justice systems;

V. Crimes for which provision is made in international treaty or convention when execution was initiated in Brazil but the results are to occur, or should have occurred in another country, or vice versa;

VI. Crimes against the structure of labor and, in such cases as may be determined by law, against the financial system and the economic and financial order;

VII. Habeas corpus in criminal matters within their jurisdiction, or when the constraint proceeds from an authority whose acts are not directly subject to some other jurisdiction;

VIII. Writs of mandamus and habeas data against an act of a federal authority, except cases over which the federal courts have jurisdiction;

IX. Crimes committed on board ships or aircraft, except those falling within the jurisdiction of the military justice system;

X. Crimes of irregular entry or permanence of an alien, the execution of a letter rogatory after the exequatur, the execution of a foreign court sentence after ratification, causes concerning nationality—including option for nationality—and naturalization;

XI. Disputes over Indian rights;

Paragraph 1. The causes in which the Union is plaintiff shall be taken to court in the judiciary section where the other party is domiciled.

Paragraph 2. Causes instituted against the Union may be taken to court in the judiciary section where the plaintiff is domiciled, or in the one where the act or event that gave rise to the suit took place, or where the thing is located, or else in the Federal District.

Paragraph 3. Causes in which a pension or assistance institution and an insured are parties shall be heard and adjudicated in the state courts, specifically in the court of the domicile of the insureds or beneficiaries, provided that the judicial district is not the seat of a federal court district and, if that is the case, the law may permit other causes also to be heard and adjudicated by the state courts.

Paragraph 4. In the instance of the previous paragraph, an appeal shall always properly be directed to the Federal Regional court in the area where the lower court judge has jurisdiction.

Article 110.

Each State, and the Federal District, shall constitute a judiciary section that will have the respective state capital city as seat, and districts located as established in law.

Sole Paragraph. In the Federal Territories, the jurisdiction and the prerogatives conferred on the federal judges shall be exercised by the judges of the local justice system, pursuant to law.

Section V - The Labor Courts and Judges

Article 111.

The following are the component bodies of the labor justice system:

- I. The Superior Labor Court;
- II. The Regional Labor Courts;
- III. The Boards of Conciliation and Judgment.

Paragraph 1. The Superior Labor Court shall be composed of 27 ministers chosen from among Brazilians who have attained the age of 35 but are less than 65 years old, appointed by the President of the Republic after approval by the Federal Senate, as follows:

I. 17 judges of law appointed for life, 11 of whom are to be chosen from among judges serving in the labor magistracy, 3 from among lawyers, and 3 from among members of the Office of Government Attorney for Labor;

II. 10 temporary representatives of occupational classes, with an equal number of representatives from classes of workers and employers;

Paragraph 2. The court shall forward lists containing three names each to the President of the Republic observing as regards the vacancies to be filled by lawyers and members of the Office of Government Attorney the provision in Article 94, and for the vacancies to be filled by representatives of occupational classes, the results of nominations made by an electoral college composed of the boards of directors of the national federations of workers or employers, as the case may be; the three-name lists to be used in filling the posts allocated to career judges from the labor magistracy shall be drawn up by the ministers who are judges of law and have life tenure.

Paragraph 3. The law shall make provisions concerning the jurisdiction of the Superior Labor Court.

Article 112.

There shall be at least one Regional Labor Court in each State and in the Federal District and the law shall institute the Boards of Conciliation and Judgment; in the judicial districts where such are not instituted, their jurisdiction may be assigned to the judges of law.

Article 113.

The law shall provide for the constitution, investment, geographical, and subject matter jurisdictions, guarantees, and conditions under which the bodies in the labor justice system shall operate, parity of representation of workers and employers being assured.

Article 114.

The labor justice system has jurisdiction to conciliate and adjudicate individual and collective labor disputes between workers and employers, including entities under international public law and of the direct and indirect public administration of the Municipalities, the Federal District, the States and the Union and, pursuant to law, other disputes resulting from the employment relationship, as well as litigation originating in the course of compliance with the system's own verdicts, including collective verdicts.

Paragraph 1. When the collective bargaining process fails, the parties may select arbiters.

Paragraph 2. If any of the parties rejects negotiation or arbitration, the respective unions are permitted to hear a collective dispute and the labor justice system may establish rules and conditions, the minimum conventional and legal provisions for protection of labor being respected.

Article 115.

The Regional Labor Courts shall be composed of judges appointed by the President of the Republic; two-thirds shall be judges of law appointed for life and one-third shall be temporary judges from the occupational classes; among the judges of law, the proportionality established in Article 111, Paragraph 1(I) shall be observed;

Sole Paragraph. The magistrates of the Regional Labor Courts shall be:

I. Labor judges chosen by promotion, alternately by seniority and merit;

II. Attorneys and members of the Office of the Government Attorney for Labor, the provision in Article 94 being obeyed;

III. Representatives of classes nominated on the lists of three names each drawn up by the boards of directors of the federations and unions having a territorial base in the region.

Article 116.

The Boards of Conciliation and Judgment shall be composed of one labor judge, who shall preside, and two temporary judges from the occupational classes representing the employees and the employers.

Sole Paragraph. The judges serving on the Boards of Conciliation and Judgment as representatives of classes shall be appointed by the President of the Regional Labor Court, pursuant to law, and may be reappointed once.

Article 117.

The term of office of the class representatives shall be 3 years, in all cases.

Sole Paragraph. The class representatives shall have alternates.

Section VI - The Electoral Courts and Judges

Article 118.

The following are the component bodies in the electoral justice system:

- I. The Superior Electoral Court;
- II. The Regional Electoral Courts;
- III. The electoral judges;
- IV. The Electoral Boards.

Article 119.

The Superior Electoral Court shall be composed of at least seven members, chosen as follows:

I. Election by secret ballot:

(a) Three judges from among the ministers on the Federal Supreme Court;

(b) Two judges from among the ministers on the Superior Court of Justice;

II. By appointment by the President of the Republic, two judges selected from among six lawyers of outstanding legal knowledge and good moral character nominated by the Federal Supreme Court.

Sole Paragraph. The Superior Electoral Court shall elect its president and vice president from among the ministers of the Federal Supreme Court, and choose the electoral magistrate ["Corregedor Eleitoral"] from among the ministers of the Superior Court of Justice

Article 120.

There shall be a Regional Electoral Court in the capital city of each State and in the Federal District.

Paragraph 1. The Regional Electoral Courts shall be composed as follows:

I. Election by secret ballot:

(a) Two judges from among the appellate court judges on the Court of Justice;

(b) Two judges from among judges of law, chosen by the Court of Justice;

II. One judge from the Federal Regional Court with seat in the capital city of the State or the Federal District, or in the absence thereof, a federal judge; in either case the choice shall be made by the respective Federal Regional Court;

III. By appointment by the President of the Republic, two judges selected from among six lawyers of outstanding legal knowledge and good moral character, nominated by the Court of Justice.

Paragraph 2. The Regional Electoral Court shall elect its president and vice president from among the appellate court judges.

Article 121.

Complementary law shall make provision for the organization and jurisdiction of the electoral courts, judges of law, and the electoral boards.

Paragraph 1. The members of the electoral courts, judges of law, and the electoral boards, while performing their duties and insofar as applicable to them, shall enjoy full guarantees and shall not be subject to removal from office.

Paragraph 2. Except for justified motives, judges on the electoral courts shall serve for at least 2 years, but never for more than two consecutive 2- year periods; their replacements shall be chosen on the same occasion and through the same procedure, in equal number for each category.

Paragraph 3. The decisions of the Superior Electoral Court are unappealable, except those that conflict with this Constitution and those that disallow a writ of habeas corpus or mandamus.

Paragraph 4. The decisions of the Regional Electoral Courts may be appealed only when:

- I. Issued against a specific provision of this Constitution or of law;
- II. There is a difference in the interpretation of law between two or more electoral courts;
- III. They deal with ineligibility or the issuance of credentials to those elected in federal or state elections;
- IV. They annul credentials or decree the forfeiture of federal or state elective mandates;
- V. They deny a writ of habeas corpus, mandamus, habeas data, or writ of injunction.

Section VII - The Military Courts and Judges

Article 122.

The following are the component bodies of the military justice system:

- I. The Superior Military Court;
- II. The military courts and judges instituted by law;

Article 123.

The Superior Military Court shall be composed of 15 ministers appointed for life by the President of the Republic after approval of the nomination by the Federal Senate; three shall be chosen from among general officers of the Navy, four from general officers of the Army, and three from general officers of the Air Force; all of these shall be in active service and at the highest career post; in addition, five civilians shall be appointed.

Sole Paragraph. The civilian ministers shall be chosen by the President of the Republic from among Brazilians who have attained the age of 35, as follows:

I. Three from among lawyers of outstanding legal knowledge and unblemished conduct, who have more than 10 years of professional practice;

II. Two, chosen on the basis of parity, from judges ["juizes auditores"] in the military justice system and members of the Office of Government Attorney for Military Affairs;

Article 124.

The military justice system has authority to hear and adjudicate military crimes defined as such in law.

Sole Paragraph. The law shall make provision for the organization, functioning, and jurisdiction of the military justice system.

Section VIII - The State Courts and Judges

Article 125.

The States shall organize their justice systems, observing the principles established in this Constitution.

Paragraph 1. The jurisdiction of the State courts shall be defined in the state Constitution; the Court of Justice shall take the initiative as regards the law of judiciary organization.

Paragraph 2. It is the province of the States to institute representation when state or municipal laws or normative acts are challenged as unconstitutional under the state Constitution; standing to sue may not be conferred on a single body.

Paragraph 3. State law may create, upon proposal by the Court of Justice, a state military justice system constituted at the original jurisdiction level by the Councils of Justice and, at the appellate level, by the Court of Justice itself, or by a Military Court of Justice in States where the size of the military police force exceeds 20,000.

Paragraph 4. It is the province of the state military justice system to proceed against and try military policemen and military firefighters for military crimes; the appropriate court may decide whether officers shall forfeit their post and rank and, in cases defined in law, the rank of the enlisted men;

Article 126.

In order to resolve conflicts concerning land ownership, the Court of Justice shall designate a special level of judgeship to deal exclusively with agrarian issues.

Sole Paragraph. Whenever necessary to the efficient rendering of jurisdictional relief, the judge shall arrange to be present at the site of the litigation.

**Chapter IV - Functions Essential to the Administration
of Justice**

**Section I - The Office of the Government Attorney
["Ministerio Publico"]**

Article 127.

The Office of Government Attorney is a permanent institution that is essential to the jurisdictional function of the State; it is charged with the defense of the legal order, the democratic regime, and the indispensable social and individual interests.

Paragraph 1. Unity, indivisibility, and functional independence are institutional principles of the Office of Government Attorney.

Paragraph 2. The Office of Government Attorney is assured functional and administrative autonomy and, the provision in Article 169 being observed, may suggest to the Legislative Branch that its positions and auxiliary services be created or abolished, and may fill them by public competition based on examinations, or on examinations and presentation of credentials; the law shall make provision for the organization and functioning of this entity.

Paragraph 3. The Office of Government Attorney shall draw up its budgetary proposal within the limits established in the budgetary guidelines law.

Article 128.

The Office of Government Attorney includes the following entities:

I. The Office of Government Attorney of the Union, which encompasses:

- (a) The Office of the Federal Government Attorney;
- (b) The Office of Government Attorney for Labor;
- (c) The Office of the Government Attorney for Military Affairs;
- (d) The Office of Government Attorney for the Federal District and the Territories;

II. The Offices of State Government Attorneys.

Paragraph 1. The Office of Government Attorney of the Union is headed by the Attorney General of the Republic, who is appointed by the President of the Republic from among career members over the age of 35 after the name has been approved by the absolute majority of the members of the Federal Senate; he shall serve a term of 2 years, and may be reappointed.

Paragraph 2. The removal from office of the Attorney General of the Republic at the initiative of the President of the Republic must be preceded by the authorization of the absolute majority of the Federal Senate.

Paragraph 3. The Offices of State Government Attorneys, and those of the Federal District and Territories, shall draw up lists of three names selected from career members pursuant to their respective laws in order to select their Attorneys General, who shall be appointed by the Chief Executive for a term of 2 years, to which he may be reappointed.

Paragraph 4. The Attorneys General in the States and in the Federal District and the Territories may be removed from office by decision of the absolute majority of the Legislature, as provided in the respective complementary law.

Paragraph 5. Complementary laws of the Union and the States, which may be introduced by the respective Attorneys General, shall establish the organization, prerogatives, and statutes for each Office of Government Attorney, observing the following as regards the members thereof:

I. The following guarantees:

(a) Life tenure after 2 years of service and immunity from forfeiture of office, except by final and unappealable court verdict;

(b) Nonsusceptibility to administrative dismissal except for reasons of public interest as determined by the appropriate collegiate body of the Office of the Government Attorney expressed by vote of two-thirds of the members of that body, the right to present a full defense being assured;

(c) Irreducibility of salary, the provisions of Article 37(XI), 150(II), 153(III), and 153, paragraph 2(I) having been observed as regards remuneration;

II. The following are prohibited to members of an Office of Government Attorney:

(a) Receipt, in any way or under any pretext, of honoraria, percentages, or procedural costs;

(b) The practice of law;

(c) Participation in a commercial company, pursuant to law;

(d) Exercising any public function other than one in the magistracy, even while in "available" status;

(e) Engaging in partisan political activity other than that covered by the exceptions provided by law;

Article 129.

The following are the institutional functions of the Office of Government Attorney:

I. Exclusive authority to file public criminal suit, pursuant to law;

II. See that the Governments and the essential public services effectively respect the rights assured in this Constitution, and promote the measures necessary to the guarantee thereof;

III. Instigate civil investigations and public civil suits in order to protect the public and social patrimony, the environment, and other diffuse and collective interests;

IV. File an action alleging unconstitutionality, or institute representation for purposes of intervention by the Union and the States, in the cases for which provision is made in this Constitution;

V. Defend in court the rights and interests of the indigenous populations;

VI. Issue notifications in administrative proceedings that are within its jurisdiction, requisitioning information and documents to support them, pursuant to the respective complementary law;

VII. Exercise external control over the actions of the police, pursuant to the complementary law mentioned in the previous article hereof;

VIII. Order investigations and the institution of police inquiries, after indicating the legal bases for its procedural statements;

IX. Exercise such other functions as may be conferred upon it, provided they are compatible with its purposes; it is prohibited from representing public entities in court or advising them on legal matters;

Paragraph 1. The acquisition of standing by the Office of Government Attorney for civil suits as provided for in this article shall not prevent third parties from acquiring standing in the same instances, according to the provision in this Constitution and by law.

Paragraph 2. The functions of the Office of Government Attorney may only be performed by career members of same, and they shall reside in the judicial district of their respective assignments.

Paragraph 3. Entry into the career service shall be gained via a public competition based on examinations and credentials, with participation by the Brazilian Bar Association in the conduct thereof being assured; the order of classification shall be obeyed in the appointment process;

Paragraph 4. The provision in Article 93(II) and (VI) applies to the Office of Government Attorney insofar as appropriate.

Article 130.

The provisions of this section pertaining to rights, prohibitions, and the manner of investiture apply to the members of the Office of the Government Attorney who are serving on the Tribunals of Accounts.

**Section II - The Office of General Counsel of the Union
["Advocacia- Geral da Uniao"]**

Article 131.

The Office of General Counsel of the Union is the institution which, directly or through an associated body, represents the Union both in and out of court; its duties—pursuant to complementary law which shall make provisions concerning its organization and functioning—are to consult and advise the Executive Branch on legal matters.

Paragraph 1. The Office of General Counsel of the Union is headed by the General Counsel of the Union, who may be freely appointed by the President of the Republic from among citizens over the age of 35 who have outstanding legal knowledge and an unblemished reputation.

Paragraph 2. Entry into the initial classes of the career service of the institution that is the subject of this article shall be gained by public competition based on examinations and presentation of credentials.

Paragraph 3. In executing the outstanding debt of a tax nature, the Union shall be represented by the Office of the Attorney General of the National Treasury, the provisions of law being observed.

Article 132.

The prosecutors of the States and the Federal District shall handle the judicial representation and legal consultation for their respective units in the Federation; they shall be organized in a career service to which entry shall be dependent upon public competition based on examinations and credentials, the provision in Article 135 being observed.

Section III - The Role of the Attorneys and Public Defenders

Article 133.

Lawyers are indispensable to the administration of justice and they are inviolable as regards the acts and statements made in the course of their professional duties, within the limits of the law.

Article 134.

The Office of the Public Defender is an institution which is essential to the jurisdictional function of the State; its duty is to guide and defend the needy at all levels of jurisdiction, pursuant to Article 5 (LXXIV).

Sole Paragraph. Complementary law shall organize the Office of Public Defender of the Union and of the Federal District and the Territories and shall prescribe general rules for their organization in the States in career positions to be filled, at the initial level, by public competition based on examinations and credentials; their members shall be assured immunity from administrative dismissal and prohibited from practicing law outside the realm of their institutional duties.

Article 135.

The principle of Article 37(XII) and of Article 39, Paragraph 1, apply to the career services disciplined in this Title.

Title V - Defense of the State and Democratic Institutions

Chapter I - The State of Emergency and the State of Siege

Section I - The State of Emergency

Article 136.

The President of the Republic may, after hearing the opinions of the Council of the Republic and the National Defense Council, decree a state of emergency in order to preserve or promptly re-establish, in certain restricted and specified locations, public order or social peace when it is threatened by grave and imminent institutional instability or affected by natural disasters of major proportions.

Paragraph 1. The decree which institutes the state of emergency shall determine the length of its duration, specify the areas to be covered, and indicate, under the terms and limits of the law, the coercive measures to be put into effect, selected from among the following:

I. Restrictions on the rights of:

(a) Assembly, even if exercised within the confines of associations;

(b) Confidentiality of correspondence;

(c) Confidentiality of telegraphic and telephonic communications;

II. Occupation and temporary use of public property and services in the event of public calamity; in such event the Union shall be liable for the resulting damages and costs;

Paragraph 2. The stipulated duration of a state of emergency shall not exceed 30 days, but may be extended once for a like period if the reasons that justified the decree persist.

Paragraph 3. During such time as a state of emergency is in force:

I. Imprisonment for a crime against the State, so determined by the authority executing the measure, shall be immediately communicated to the appropriate judge, who shall relax it if it is not legal; the prisoner is permitted to ask the police authority for an examination of the corpus delicti;

II. The communication shall be accompanied by a statement by the authority concerning the physical and mental condition of the detained at the time he was charged;

III. No person may be imprisoned or detained for more than 10 days, except when authorized by the Judicial Branch;

IV. Holding a prisoner incommunicado is prohibited.

Paragraph 4. After a state of emergency or extension thereof has been decreed, the President of the Republic shall submit the act and its respective justification to the National Congress within 24 hours; Congress shall make its decision by absolute majority.

Paragraph 5. If the National Congress is in recess it shall be convened in special session within 5 days.

Paragraph 6. The National Congress shall review the decree within 10 days of receiving it and shall remain in session for so long as the state of emergency is in effect.

Paragraph 7. If the decree is rejected, the state of emergency shall cease immediately.

Section II - The State of Siege

Article 137.

The President of the Republic may, after hearing the opinions of the Council of the Republic and the National Defense Council, request authorization from the National Congress to decree a state of siege in the following cases:

I. Serious disturbance of national scope, or occurrence of events that attest to the ineffectiveness of the measure taken during the state of emergency;

II. Declaration of a state of war, or response to armed foreign aggression;

Sole Paragraph. The President of the Republic, in requesting authorization to decree the state of siege or extension thereof, shall list the motives that led to the request, and the National Congress shall make its decision by absolute majority;

Article 138.

The state of siege decree shall indicate the duration thereof, the rules necessary for its execution, and the constitutional guarantees that will be suspended; after publication, the President of the Republic shall designate the executor of the specific measures and the areas covered by them.

Paragraph 1. A state of siege instituted in the case of Article 137(I) may not be decreed for more than 30 days, nor may it be extended for more than 30 days at a time; in the case of Article 137(II), the state of siege may be decreed for as long as the war or the armed foreign aggression persists.

Paragraph 2. When authorization has been requested to decree a state of siege during a congressional recess, the President of the Federal Senate shall immediately convene a special session of the National Congress in order that it may meet within 5 days to consider the act.

Paragraph 3. The National Congress shall remain in session until the end of the coercive measures.

Article 139.

During the time that a state of siege decreed on the basis of Article 137(I), is in effect, only the following measures may be taken against individuals: I. Obligation to remain in a specified place;

II. Detention in buildings not intended for those accused or convicted of common crimes;

III. Restrictions relative to the inviolability of correspondence, the confidentiality of communications, the furnishing of information, and the freedom of the press and radio and television broadcasting, pursuant to law;

IV. Suspension of freedom of assembly;

V. Search and seizure in the home;

VI. Intervention in public utility companies;

VII. Requisitioning of property.

Sole Paragraph. The restrictions of subsection III of this Article do not include the dissemination of statements by legislators made within their legislative Houses, provided they were released by the presiding officers of the respective House.

Section III - General Provisions

Article 140.

The presiding officers of the National Congress, after hearing the opinion of the party leaders, shall appoint a committee composed of five of its members to monitor and oversee the execution of the measures relating to the state of emergency and the state of siege.

Article 141.

When the state of emergency or state of siege has ended, its effects shall also cease, without prejudice to the liability for illegal acts committed by its executors or agents.

Sole Paragraph. As soon as the state of emergency or state of siege ends, the President of the Republic shall send a message to the National Congress listing the measures applied during the time it was in effect, along with specific descriptions of the measures adopted and the justifications for them; also included shall be a listing, by name, of those affected and an indication of the restrictions imposed.

Chapter II - The Armed Forces

Article 142.

The Armed Forces, which consist of the Navy, the Army, and the Air Force, are permanent and normal national institutions organized on the basis of hierarchy and discipline under the supreme authority of the President of the Republic. Their purpose is to defend the fatherland, guarantee the constitutionally established powers and—upon the initiative of any of said powers—law and order.

Paragraph 1. Complementary law shall establish the general rules to be adopted in the organization, training, and employment of the Armed Forces.

Paragraph 2. Habeas corpus may not be invoked in relation to military disciplinary punishments.

Article 143.

Military service is obligatory, pursuant to law.

Paragraph 1. The Armed Forces have authority, pursuant to law, to assign alternative service to those who, in time of peace and after having registered, invoke the dictates of conscience, such being understood as deriving from religious belief and philosophical or political conviction, in order to exempt themselves from activities of an essentially military nature.

Paragraph 2. Women and clergymen are exempt from compulsory military service in time of peace but may, however, be subject to such other responsibilities as the law may assign to them.

Chapter III - Public Safety

Article 144.

The public safety function, which is a duty of the State and a right and responsibility of all, is exercised, in order to preserve public order and the invulnerability of persons and property, through the following agencies:

- I. The federal police;
- II. The federal highway police;
- III. The federal railroad police;
- IV. Civilian police forces;
- V. Military police forces and military fire departments.

Paragraph 1. The purpose of the federal police, instituted by law as a permanent agency and structured as a career service, is to:

I. Investigate criminal offenses committed against the political and social order, or in detriment to the property, services, and interests of the Union or of its autonomous entities and public corporations, as well as other offenses that have interstate or international repercussions and demand uniform suppression, according to the provisions of law;

II. Prevent and suppress illicit traffic in narcotics and related drugs, as well as contraband and misappropriation, without prejudice to the role of the Treasury and other public agencies in their respective spheres of authority;

III. Perform the functions of a Coast Guard, air police, and border patrol;

IV. Perform, with exclusivity, the functions of the judiciary police of the Union.

Paragraph 2. The purpose of the federal highway police, a permanent agency structured as a career service, is the conspicuous patrolling of the federal highways, pursuant to law.

Paragraph 3. The purpose of the federal railroad police, a permanent agency structured as a career service, is the conspicuous patrolling of the federal railways, pursuant to law.

Paragraph 4. The civilian police forces, headed by career police chiefs ["delegados"], are responsible for performing—except within the jurisdiction of the Union—the duties of a judiciary police force and for investigating criminal offenses, except military criminal offenses.

Paragraph 5. The function of the military is to serve as a conspicuous police force and to preserve public order; the military fire departments, in addition to prerogatives defined by law, are responsible for civil defense activities.

Paragraph 6. The military police forces and the military fire departments, and the auxiliary forces and the Army Reserve are subordinate, along with the civilian police forces, to the governors of the States, the Federal District, and the Territories.

Paragraph 7. The law shall regulate the organization and functioning of the agencies that are responsible for public safety in such a way as to ensure the efficiency of their activities.

Paragraph 8. The Municipalities may establish municipal guard forces to protect their property, services, and facilities, as the law may provide.

Title VI - Taxation and the Budget

Chapter I - The National Tax System

Section I - General Principles

Article 145.

The Union, the States, the Federal District and the Municipalities may institute the following forms of taxation:

I. Taxes ["impostos"];

II. Fees ["taxas"] levied by virtue of the exercise of police power or for the actual or potential use of specific and divisible public services furnished to the taxpayer or made available to him;

III. Improvements contributions, resulting from public works;

Paragraph 1. Whenever possible, taxes shall be of a personal nature and shall be graduated according to the economic ability of the tax payer to pay; therefore, in order to implement these objectives, the taxing administration is authorized to identify the property, earnings, and economic activities of the taxpayer, pursuant to law and with due regard for individual rights.

Paragraph 2. Fees may not be calculated on the same unique basis as used for taxes.

Article 146.

Complementary law shall:

I. Make provision concerning conflicts of jurisdiction in tax matters between the Union, the States, the Federal District, and the Municipalities;

II. Issue regulations to implement the constitutional limitations on the power to tax;

III. Set general rules on the subject of tax legislation, especially on:

(a) Definition of the various levies and their types and, as regards the taxes specifically mentioned in this Constitution, definition of the circumstances that generate liability for each, the bases for calculation, and the taxpayers to be affected;

(b) Tax obligations, assessments, credits, prescription, and laches;

(c) Suitable tax treatment of the acts engaged in by cooperatives.

Article 147.

The Union has authority to levy the state taxes in a Federal Territory and if the Territory has not been divided into Municipalities, the Union also has authority to levy the municipal taxes; the Federal District has authority to levy municipal taxes within its jurisdiction.

Article 148.

The Union, through complementary law, may institute compulsory [taxpayer] loans for the following purposes:

I. In order to meet unusual expenses resulting from public disaster, or from foreign war or imminence thereof;

II. In the case of public investment of an urgent nature and of significant national interest, with due regard for the provision in Article 150(III)(b).

Sole Paragraph. The proceeds of a compulsory loan shall be allocated to the expenditure that was the basis for its institution.

Article 149.

The Union has exclusive authority, as a means of performing its role in the respective areas, to institute social welfare contributions, levies that intervene in the economic domain, and contributions that are in the interest of the occupational or business categories, the provision in Articles 146(III) and 150(I) and (III) being observed, and without prejudice to the provision in Article 195, Paragraph 6, regarding the contributions to which the provision alludes.

Sole Paragraph. The States, the Federal District, and the Municipalities may institute contributions, to be charged against their employees, in order to defray the costs of pension and social assistance schemes to benefit said employees.

Section II - Limitations on the Power to Tax

Article 150.

Without prejudice to other guarantees of which the taxpayer is hereby assured, the following are prohibited to the Union, the States, the Federal District, and the Municipalities:

I. Demanding or increasing a tax without a law establishing it;

II. Instituting unequal treatment of taxpayers whose situations are equivalent to each other; any distinction on the basis of professional occupation or duties performed is specifically prohibited, regardless of the legal nomenclature of the earnings, documents, or rights;

III. Levying taxes as follows:

(a) On the basis of events that occurred prior to the time when the law that instituted or increased the tax took effect;

(b) In the same fiscal year in which the law that instituted or increased the tax was published;

IV. Using taxes as a means of confiscation;

V. Establishing restrictions on the movement of persons or goods by means of interstate or intercity taxes, except for the collection of tolls for the use of highways and other thoroughfares maintained by the Government;

VI. Instituting taxes on:

(a) Patrimony, income, or services, one [derived] from another;

(b) Churches, regardless of religious denomination;

(c) Patrimony, income, or services belonging to the political parties, including their foundations, or to labor unions or nonprofit educational or charitable institutions, with due regard for the requirements of law;

(d) Books, newspapers, periodicals and the paper to be used for printing them.

Paragraph 1. The prohibition of Subsection (III)(b) above does not apply to the taxes for which provision is made in Article 153 (I), (II), (IV) and (V) and in Article 154(II).

Paragraph 2. The prohibition of Subpart (VI)(a) extends to the autonomous entities and the foundations instituted and maintained by the Government as regards the patrimony, income, and services connected with their essential services or resulting therefrom.

Paragraph 3. The prohibitions of Subpart (VI)(a) and of the preceding paragraph do not apply to the patrimony, income, and services related to engagement in of economic activities that are governed by the rules applicable to private enterprises, or where there is compensation or payment of prices or tariffs by the user, nor do they exonerate a potential purchaser from the obligation to pay tax on an item of real estate.

Paragraph 4. The prohibitions set forth in Subparts (VI)(b) and (c) cover only the patrimony, income, and services related to the essential purposes of the entities mentioned therein.

Paragraph 5. The law shall order measures to be taken to enable consumers to clearly understand the taxes that apply to goods and services.

Paragraph 6. Any amnesty or refund that involves tax or social security matters may only be granted via specific federal, state, or municipal law.

Article 151.

The Union is forbidden to:

I. Institute a tax that is not uniform throughout Brazilian territory or which implies a distinction or preference as regards a State, the Federal District, or the Municipality to the detriment of another; however, tax incentives may be granted in order to promote equilibrium among the various regions of Brazil in terms of socioeconomic development;

II. Tax the income from government bonds issued by the States, the Federal District, and the Municipalities or the remuneration and pensions of the respective government agents at levels higher than those established for its own bonds and its own agents;

III. Institute exemptions from taxes over which the States, the Federal District, or the Municipalities have jurisdiction.

Article 152.

The States, the Federal District, and the Municipalities are prohibited from establishing a tax differential between goods and services of any kind on the basis of their origin or destination.

Section III - Taxes Levied by the Union

Article 153.

The Union has authority to institute taxes on the following:

I. Importation of foreign products;

II. Export, to other countries, of domestic or nationalized products;

III. Income and earnings of any kind;

IV. Manufactured products;

V. Credit, exchange, and insurance transactions, or transactions relating to negotiable instruments or securities;

VI. Rural land ownership;

VII. Large fortunes, as may be provided by complementary law.

Paragraph 1. With due regard for the conditions and limits established by the laws, the Executive Branch is authorized to change the rates of the taxes enumerated in Subsections I, II, IV, and V of this Article.

Paragraph 2. The tax for which provision is made in subsection III of this Article:

I. Shall be based on the criteria of generality, universality, and progressiveness, pursuant to law;

II. Shall not be levied, under the terms and limits established by law, on earnings derived from retirement and pensions paid by the social security system of the Union, the States, the Federal District, or the Municipalities to a person over the age of 65 whose entire income consists solely of earnings from employment.

Paragraph 3. The tax for which provision is made in Subsection IV of this article:

I. Shall be selective, thus dependent on the degree to which the product is essential;

II. Shall not be cumulative; the amount owed on each operation shall be offset by the amount collected in the previous operations;

III. Shall not be levied on manufactured products intended for shipment outside Brazil;

Paragraph 4. The rates of the tax for which provision is made in Subsection VI shall be fixed in such a manner as to discourage the holding of unproductive properties and shall not be levied on small rural holdings, defined as such by law, when exploited by the owner alone or with his family, when said person owns no other real estate.

Paragraph 5. Gold, when defined in law as a financial asset or instrument of exchange, is to be subject only to the tax referred to in Subsection V of the first portion of this article; the tax shall be due on the first transaction at the point of origin thereof and the minimum rate shall be 1 percent; assurance is hereby given that the revenue collected will be distributed as follows:

I. 30 percent for the State, the Federal District, or the Territory, depending on the origin of the gold;

II. 70 percent for the Municipality of origin.

Article 154.

The Union may institute the following:

I. Through complementary law, taxes not provided for in the previous article, as long as they are noncumulative and neither the circumstance that generates liability thereunder, nor the basis of calculation thereof, is the same as for the taxes listed in this Constitution.

II. When a foreign war is imminent or in progress, special taxes that may or may not be included in its taxation authority; in such event, these shall be abolished gradually once the causes for which they were created no longer exist.

Section IV - Taxes Levied by the States and the Federal District

Article 155.

The States and the Federal District have authority to institute the following:

I. Taxes on:

(a) Transmission, due to death or donation, of any property or rights;

(b) Transactions relating to the circulation of goods and the rendering of interstate and intercity transportation and communication services, even when the transactions and the rendering of services began outside Brazil;

(c) Ownership of automotive vehicles;

II. A surcharge of as much as 5 percent of what is paid to the Union by individuals or legal entities domiciled within their respective territories under the tax for which provision is made in Article 153 (III), but assessed on profits and capital gains and earnings.

Paragraph 1. The following apply to the tax for which provision is made in Subpart I(a):

I. Relative to real estate and the rights thereto, the authority to tax lies with the State where the property is located, or with the Federal District;

II. Relative to real estate, negotiable instruments, and credits, the authority to tax lies with the State where the will was probated or the asset recorded or where the donor is domiciled, or with the Federal District;

III. Authority to institute such tax shall be regulated by complementary law in the following cases:

(a) If the donor was domiciled or resident outside Brazil;

(b) If the deceased possessed property outside Brazil, or was resident or domiciled there, or his will was probated there;

IV. The maximum rates shall be determined by the Federal Senate.

Paragraph 2. The following shall be observed as regards the tax for which provision is made in Subpart I(b):

I. It shall be noncumulative: The amount owed on each transaction as regards the circulation of goods or the rendering of services shall be offset by the amount collected on the previous transactions by the same State, or by another State or the Federal District;

II. Except as may be otherwise determined by legislation, exemption from or nonapplicability of said tax:

(a) Shall not imply a credit that could be offset against the amount owed on the subsequent transactions or services;

(b) Shall entail the annulment of the credit relative to the previous transactions;

III. Said tax may be selective, thus dependent upon the degree to which the goods and services are deemed essential;

IV. Resolution by the Federal Senate, on the initiative of the President of the Republic or of one-third of the senators and approved by the absolute majority of its members, shall establish the tax rates applicable to interstate and export transactions and services;

V. The Federal Senate is authorized to do the following as regards this tax:

(a) Establish minimum rates on internal transactions, by decision made at the initiative of one-third of its members and approved by the absolute majority thereof;

(b) Set maximum rates on the same transactions in order to resolve a specific conflict that involves the interest of States, by decision made at the initiative of the absolute majority and approved by two-thirds of its members;

VI. Except when otherwise decided by the States and the Federal District pursuant to the provision in Subpart XII(g), the internal rates on the transactions relative to circulation of goods and rendering of services may not be lower than those provided for interstate transactions.

VII. The following shall be adopted as regards transactions and activities that make goods and services available to a final consumer located in another State:

(a) The interstate tax rates, when the recipient is a taxpayer under the particular tax;

(b) The internal rate, when the recipient is not a taxpayer under such tax;

VIII. In the instance of Subpart (a) of Subsection (VII) above, the State where the recipient is located has authority to levy the tax corresponding to the difference between the internal and the interstate rates;

IX. The tax [provided for in Subpart I(b) of this Article] shall also be assessed:

(a) On the entry of goods imported from outside Brazil, even when the item involved is intended for consumption by or incorporation into the fixed assets of the [recipient] establishment, as well as on a service rendered outside Brazil; the tax is levied by the State where the establishment that received the goods or the service is situated;

(b) On the total value of the transaction, when goods are furnished along with services that are not included within the taxing authority of the Municipalities;

X. Said tax shall not be assessed:

(a) On transactions that ship manufactured products to destinations outside Brazil, excluding semifinished goods defined as such by complementary law;

(b) On transactions that ship to other States petroleum, including lubricants and liquid or gaseous fuels derived therefrom, or electrical energy;

(c) On gold, in the instances defined in Article 153, Paragraph 5.

XI. Said tax shall not include in its basis of calculation the amount of the tax on manufactured products when the transaction, consummated between taxpayers and relating to a product intended for manufacture or commercial sale, constitutes a liability-generating event under both taxes;

XII. The following are to be accomplished by complementary law:

(a) Define the taxpayers;

(b) Provide concerning taxpayer substitution;

(c) Regulate the tax offset regime;

(d) Determine, for purposes of collecting the tax and defining the liable establishment, the sites of transactions that relate to the circulation of goods and the rendering of services;

(e) Exclude from application of the tax, in exports to destinations outside Brazil, services and other products in addition to those mentioned in Subpart X(a);

(f) Anticipate cases where a credit relating to the shipment of services and goods to another State or export to destinations outside Brazil would be maintained;

(g) Regulate the manner in which, by decision of the States and the Federal District, tax exemptions, incentives, and benefits shall be granted or revoked.

Paragraph 3. Except for the taxes dealt with in Subpart I(b) of the first portion of this Article, and except for Articles 153(I) and (II) and 156 (III), no other tax shall be assessed on transactions relating to Brazilian electrical energy, liquid and gaseous fuels, and minerals.

Section V - Taxes Levied by the Municipalities

Article 156.

The Municipalities have the authority to levy taxes on the following:

I. Urban real estate, both land and buildings;

II. Any inter vivos transfer of real estate that takes place, in return for compensation, by natural or artificial accession, or transfer inter vivos of rights in rem to real estate, except rights to the value thereof, as well as assignment of rights to acquire real estate;

III. Retail sales of liquid and gaseous fuels, except diesel oil;

IV. Services of any kind not included under Article 155 (I)(b), as defined by complementary law.

Paragraph 1. The tax for which provision is made in Subsection I of this Article may be progressive, pursuant to municipal law, in order to ensure that property fulfills its function in society.

Paragraph 2. The tax for which provision is made in Subsection II of this article:

I. Shall not be assessed against the transfer of assets or rights that were incorporated into the patrimony of a legal entity during the process of capitalization, nor on the transfer of assets or rights resulting from consolidation, merger, spinoff or extinction of a legal entity unless, in such cases, the preponderant activity in which the purchaser engages is the purchase and sale of such assets or rights, the leasing of real estate, or commercial leasing;

II. Is to be levied by the Municipality where the property is situated.

Paragraph 3. The tax for which provision is made in Subsection III of this article does not prevent the state tax provided for in Article 155(b) from being assessed on the same transaction.

Paragraph 4. Complementary law shall:

I. Set maximum rates for the taxes provided for in Subsections III and IV of this Article.

II. Exclude, from the assessment of the tax provided for in Subsection IV, exports of services to destinations outside Brazil.

Section VI - Revenue-Sharing

Article 157.

The following belong to the States and the Federal District:

I. The proceeds from the collection of the Union's tax on income and earnings of any kind, assessed at the source on earnings paid for any reason by the States and the Federal District, their autonomous entities, and by the foundations which they institute and maintain;

II. 20 percent of the proceeds from the collection of any tax that the Union institutes in the course of exercising the authority attributed to it by Article 154(I).

Article 158.

The following belong to the Municipalities:

I. The proceeds from the collection of the Union's tax on income and earnings of any kind, assessed at the source on earnings paid for any reason by the Municipalities, their autonomous entities, and by the foundations which they instituted and maintain;

II. 50 percent of the proceeds from the collection of the Union's tax on rural land ownership, relative to the buildings situated thereon;

III. 50 percent of the proceeds from the collection of the State tax on ownership of automotive vehicles licensed in their territories;

IV. 25 percent of the proceeds from the collection of the State tax on transactions relating to the circulation of goods and the rendering of interstate and intercity transportation and communications services.

Sole Paragraph. The revenue portions mentioned in Subsection IV of this Article as belonging to the Municipalities shall be credited in accordance with the following criteria:

I. At least three-fourths, in proportion to the value added in the transactions relating to circulation of goods and the furnishing of services that occur within their territories;

II. Up to one-fourth, in accordance with what state law may provide, or, in the case of the Territories, federal law.

Article 159.

The Union shall deliver the following:

I. 47 percent of the proceeds from the collection of taxes on income and earnings of any kind and on manufactured products is to be transferred in the following manner:

(a) 21.5 percent to the Participation Fund of the States and the Federal District;

(b) 22.5 percent to the Participation Fund of the Municipalities;

(c) 3 percent to be invested in programs to finance the productive sector in the North, Northeast, and West Central regions through their regional financial institutions and in accordance with the regional development programs, the semiarid area of the Northeast being assured receipt of half the funds destined to that region, in the manner to be established by law;

II. 10 percent of the proceeds from the collection of the tax on manufactured products goes to the States and to the Federal District, in proportion to the value of their respective exports of manufactured products.

Paragraph 1. For purposes of calculating the amount to be delivered pursuant to Subsection (I), the portion of the revenue from the tax on income and earnings of any kind belonging to the States, the Federal District, and the Municipalities pursuant to the provision in Articles 157(I) and 158(I) shall be excluded.

Paragraph 2. No unit of the Federation may be allocated a portion greater than 20 percent of the amount referred to in Subsection II of this Article; any excess should be distributed among the remaining participants maintaining, as regards those participants, the apportionment criteria established therein.

Paragraph 3. The States shall deliver to the respective Municipalities 25 percent of the funds that they received pursuant to Subsection II, observing the criteria established in Article 158, sole paragraphs (I) and (II).

Article 160.

Retention of the funds allocated in this section to the States, the Federal District, and the Municipalities, including surcharges and increases relating to taxes, or the imposition of any restriction on the delivery and the use thereof, is prohibited.

Sole Paragraph. This prohibition does not prevent the Union from conditioning the delivery of the funds on the payment of sums owed to it.

Article 161.

Complementary law shall:

I. Define "value added" for purposes of the provision of Article 158, sole paragraph (I);

II. Establish rules for the delivery of the funds mentioned in Article 159, especially on the criteria for apportioning the funds provided for in its Subsection I, with a view to promoting socioeconomic equilibrium among States and among Municipalities;

III. Make provision for a means by which the beneficiaries can monitor the calculation of the quotas and the release of the shares for which provision is made in Articles 157, 158, and 159.

Sole Paragraph. The Tribunal of Accounts of the Union shall calculate the quotas referring to the participation funds mentioned in Subsection II of this Article.

Article 162.

The Union, the States, the Federal District and the Municipalities shall announce, not later than the last day of the month following collection, the amounts of each of the taxes collected, the funds received, the sums of tax origin that were delivered and those still to be delivered, and the apportionment criteria that were applied, expressed in numbers.

Sole Paragraph. The data made public by the Union shall be broken down by State and by Municipality; those released by the States, by Municipality.

Chapter II - Public Finance

Section I - General Rules

Article 163.

Complementary law shall make provisions concerning:

I. Public finances;

II. Foreign and domestic public debt, including the debt of the autonomous entities, foundations, and other entities controlled by the Government;

III. The granting of guarantees by the public entities;

IV. The issuance and redemption of instruments of public indebtedness;

V. Supervision of the financial institutions;

VI. Exchange transactions realized by agencies and entities of the Union, the States, the Federal District and the Municipalities;

VII. Harmonization of the functions of the Union's official credit institutions, yet safeguarding all the operational features and conditions of those devoted to regional development.

Article 164.

The authority of the Union to issue currency shall be exercised exclusively by the Central Bank.

Paragraph 1. The Central Bank is prohibited from granting loans, directly or indirectly, to the National Treasury or to any agency or entity that is not a financial institution.

Paragraph 2. The Central Bank may purchase and sell negotiable instruments issued by the National Treasury, in order to regulate the money supply or the interest rate.

Paragraph 3. The cash assets of the Union shall be deposited in the Central Bank; those of the States, the Federal District, the Municipalities, and the agencies or entities of the Government and the companies it controls shall be deposited in official financial institutions, except in cases for which provision is made in law.

Section II - Budgets

Article 165.

Laws to be introduced at the initiative of the Executive Branch shall establish the following:

I. The multiyear plan;

II. The budgetary guidelines;

III. The annual budgets.

Paragraph 1. The law which institutes the multiyear plan shall establish, on a regionalized basis, the guidelines, objectives, and goals of the federal public administration for expenditures of capital and other expenditures deriving therefrom, and for expenditures relating to ongoing programs.

Paragraph 2. The budgetary guidelines law shall include the goals and priorities of the federal public administration, including capital expenditures for the subsequent financial year, shall guide the drafting of the annual budget law, make provision for amendments in the tax legislation, and establish policy for investments by the official financial development agencies.

Paragraph 3. The Executive Branch shall publish, not later than 30 days following the closing of each 6-month period, a summary report on the implementation of the budget.

Paragraph 4. The national, regional, and sectoral plans for which provision is made in this Constitution shall be developed in such a way as to be consistent with the multiyear plan; furthermore, they shall be reviewed by the National Congress.

Paragraph 5. The annual budget law shall encompass the following:

I. The fiscal budget for the branches of the Union, their funds, agencies, and entities of the direct and indirect administration, including foundations instituted and maintained by the Government;

II. The investment budget for the companies in which the Union, directly or indirectly, holds the majority of the voting stock;

III. The social security budget, covering all the entities and bodies that are associated with that program in the direct or indirect administration, as well as the funds and foundations instituted and maintained by the Government.

Paragraph 6. The budget bill shall be accompanied by a regionalized statement of the effect that exemptions, amnesties, refunds, subsidies, and benefits of a financial, tax, or credit nature have on revenues and expenditures.

Paragraph 7. The budgets for which provision is made in Paragraphs 5(I) and (II) of this Article, when harmonized with the multiyear plan, shall include among their functions that of reducing inequalities among regions, according to a demographic criterion.

Paragraph 8. The annual budget law shall not contain provisions alien to the forecasting of revenues and the determination of expenses; this prohibition does not include authorizations for the opening of supplementary lines of credit and contracting of credit operations, even if done in anticipation of revenues, pursuant to law.

Paragraph 9. Complementary law shall:

I. Provide concerning the budgetary guidelines law and the annual budget law—their fiscal years, their entry into force, the deadlines, the drafting and their organization;

II. Establish rules of financial and property management for the direct and indirect administration, as well as conditions for the institution and functioning of the various funds.

Article 166.

Bills of law relating to the multiyear plan, budgetary guidelines, the annual budget, and the additional credits shall be reviewed by both houses of the National Congress pursuant to their common body of rules.

Paragraph 1. A joint standing committee of senators and deputies shall be responsible for:

I. Examining and issuing an opinion on the bills mentioned in this Article and on the accounts submitted each year by the President of the Republic;

II. Examining and issuing an opinion on the national, regional, and sectoral plans and programs for which provision is made in this Constitution and performing the task of budgetary monitoring and supervision, without prejudice to the role of the other committees of the National Congress and the houses thereof created pursuant to Article 58.

Paragraph 2. Amendments shall be submitted to the joint committee, which shall issue an opinion on them; they shall then be considered, as provided in the rules, by the two houses of the National Congress meeting in plenary session.

Paragraph 3. Amendments to the draft of the annual budget law or to the bills which modify it may only be approved in the following cases:

I. When compatible with the multiyear plan and the budgetary guidelines law;

II. When they identify the necessary funds, only funds resulting from an annulment of another expenditure being permitted; those amendments that would affect the following are excluded:

(a) Appropriations for personnel and the cost of their benefits;

(b) Debt service;

(c) Constitutional tax transfers to the States, Municipalities, and the Federal District; or,

III. When they are related to the following:

(a) The correction or errors or omissions; or

(b) Provisions of the text of the bill.

Paragraph 4. Amendments to the budgetary guidelines bill may not be approved when incompatible with the multiyear plan;

Paragraph 5. The President of the Republic may send a message to the National Congress in order to propose a modification in the bills of law to which this Article refers, as long as the joint committee has not yet begun to vote on the part that is the object of the proposed change.

Paragraph 6. The bills for the multiyear plan law, the budgetary guidelines law, and the annual budget law shall be sent by the President of the Republic to the National Congress, pursuant to the complementary law referred to in Article 165, Paragraph 9.

Paragraph 7. Insofar as they do not conflict with the provision in this section, the other rules relating to the legislative process apply to the bills mentioned in this Article.

Paragraph 8. Those funds which, as a result of a veto, amendment, or rejection of the annual budget bill, are left without a corresponding expenditure shall be utilized through special or supplementary credits, as appropriate, after having been specifically authorized in advance by the legislature.

Article 167.

The following are prohibited:

I. Starting programs or projects that were not included in the annual budget law;

II. The expenditure of funds or the assumption of direct obligations that exceed the budgetary or additional credits;

III. The consummation of credit transactions that exceed the level of the capital expenditures, except those authorized through supplementary or special credits having a specific purpose and approved by the Legislative Branch by absolute majority;

IV. Linking tax revenues to a particular agency, fund, or expenditure, except the revenue sharing referred to in Articles 158 and 159, the appropriation of funds for the maintenance and development of education as determined by Article 212, and the furnishing of guarantees on the credit transactions based on anticipated revenues and provided for in Article 165, Paragraph 8.

V. The opening of supplementary or special lines of credit without prior legislative authorization and without indication of the corresponding funds;

VI. The transposition, rearrangement, or the transfer of funding from one program category to another, or from one body to another, without prior legislative authorization;

VII. The granting or utilization of unlimited lines of credit;

VIII. The use, without specific legislative authorization, of funds from the fiscal and social security budgets to meet a need or cover a deficit of a company, foundation, or fund, including those mentioned in Article 165, Paragraph 5.

IX. The institution of funds of any kind, without prior legislative authorization.

Paragraph 1. No investment whose execution extends beyond one fiscal year may be initiated without first having been included in the multiyear plan, or in absence of a law that would authorize its inclusion; otherwise, those responsible may be charged with the crime of abuse of power;

Paragraph 2. Special and extraordinary credits shall have validity during the fiscal year in which they were authorized—unless the act authorizing them is promulgated during the last 4 months of that year, in which case, after being reopened at the limits of their balances, they shall be incorporated into the budget for the subsequent fiscal year.

Paragraph 3. An extraordinary line of credit may only be opened in order to defray unforeseeable and urgent expenses, such as those resulting from war, internal disturbance, or public disaster, the provision in Article 62 being observed.

Article 168.

The funds corresponding to the budgetary appropriations, including the supplementary and special credits, earmarked for the bodies within the Legislative and Judicial Branches and the Office of the Government Attorney shall be delivered to them not later than the 20th day of each month, pursuant to the complementary law to which Article 165, Paragraph 9, refers.

Article 169.

The expenditure on active and inactive personnel of the Union, the States, the Federal District, and the Municipalities may not exceed the limits established by complementary law.

Sole Paragraph. No benefit or increase in remuneration may be granted, or positions created, or career service structures altered, or personnel hired for any reason by the agencies and entities of the direct or indirect administration, including foundations instituted and maintained by the Government, unless:

I. Sufficient budgetary appropriations already exist to meet the projected expenditures on personnel and the increases resulting therefrom;

II. Specific authorization is contained in the budgetary guidelines law; this does not apply to public corporations and mixed-economy firms.

Title VII - The Economic and Financial Order

Chapter I - The General Principles of Economic Activity

Article 170.

The purpose of the economic order, which is based on the respect for human labor and on free enterprise, is to assure each person a measure of dignity in his existence according to the dictates of social justice, the following principles being observed:

- I. National sovereignty;
- II. Private property;
- III. The social function of property;
- IV. Freedom of competition;
- V. Consumer protection;
- VI. Environmental protection;
- VII. Reduction of regional and social inequalities;
- VIII. The pursuit of full employment;
- IX. Favorable treatment for small, domestically-capitalized Brazilian companies.

Sole Paragraph. Everyone is assured the right to freely engage in any economic activity, without need to obtain authorization from public agencies, except as provided by law.

Article 171.

The following definitions apply:

I. A Brazilian company ["*empresa brasileira*"] is considered to be one that was constituted under Brazilian laws and whose head office and management are in Brazil;

II. A Brazilian company with national capital ["*empresa brasileira de capital nacional*"] is one whose actual control is permanently held, directly or indirectly, by individuals resident and domiciled in Brazil or by domestic public entities; actual control of a company is considered as the holding ["*titularidade*"] of the majority of its voting capital, and the exercise, both *de facto* and *de jure*, of the decisionmaking power to manage its activities.

Paragraph 1. The law may, as regards a Brazilian company with national capital:

I. Grant special temporary protection and benefits for engaging in activities considered of strategic importance for the national defense or vital to the nation's development;

II. Establish, whenever a sector is considered vital to the nation's technological development, conditions and requisites such as the following:

(a) A requirement that the control referred to in Subsection II of the main provision of this Article be extended to the technological activities of the company—such being understood to mean the exercise, both *de facto* and *de jure*, of the power to make decisions to develop or absorb technology;

(b) Percentages of participation, in the capital, by individuals resident and domiciled in Brazil or domestic public entities.

Paragraph 2. In the acquisition of property and services, the Government shall give preferential treatment, pursuant to law, to Brazilian companies with national capital.

Article 172.

The law shall regulate investments of foreign capital, encourage reinvestment, and regulate the remittance of profits, all on the basis of the national interest.

Article 173.

Except as provided in this Constitution, the State may engage directly in an economic activity only when necessary because of imperatives of national security or a vital collective interest, as defined by law.

Paragraph 1. The public corporations, mixed-economy firms, or other entities that engage in an economic activity are subject to the same distinctive legal regime as the private companies, including aspects relating to labor and tax obligations.

Paragraph 2. Public corporations and mixed-economy firms shall not enjoy fiscal privileges that are not extensive to the private sector.

Paragraph 3. The law shall regulate the relationship of public corporations to the State and society.

Paragraph 4. The law shall repress abuse of economic power that is directed toward domination of markets, elimination of competition, and the arbitrary increase of profits.

Paragraph 5. Without prejudice to the individual liabilities of the officers of a legal entity, the law shall establish the sphere of liability of such entities and subject them to punishment, compatible with their nature, for acts committed against the economic and financial order and against the public's economic interest.

Article 174.

As the normative and regulating agent for the national economy, the State shall exercise, pursuant to law, the functions of supervision, incentive, and planning; this role is mandatory for the public sector and optional for the private sector.

Paragraph 1. The law shall establish the guidelines and bases for planning a balanced national development that will incorporate and harmonize the national and regional development plans.

Paragraph 2. The law shall support and stimulate the cooperative movement and other forms of association.

Paragraph 3. The State shall favor the organization into cooperatives of the minerals prospecting activity that is conducted in rudimentary fashion ["atividade garimpadeira"], taking into account considerations of environmental protection and the socioeconomic advancement of the prospectors.

Paragraph 4. The cooperatives referred to in the previous paragraph of this article shall be given priority in the granting of authorization or permits to prospect for and mine those mineral resources and deposits that can be worked by rudimentary methods ["garimpaveis"], both in those areas where such cooperatives are operating and in others determined by law pursuant to Article 21(XXV).

Article 175.

It is incumbent upon the Government, pursuant to law, to provide public services either directly or under a concession or permit regime, but always through competitive bidding.

Sole Paragraph. The law shall make provision for:

I. The regime under which companies that hold concessions or permits to provide public services shall operate, the special nature of their contracts and the renewal thereof, as well as the conditions under which the concession or permit is to expire or be terminated and the manner in which its performance is to be supervised;

II. User rights;

III. Rates policy;

IV. The obligation to maintain satisfactory service.

Article 176.

Mineral deposits, whether being worked or not, and other mineral resources, as well as the potential sources of hydraulic power, constitute property that is distinct

from the soil for purposes of exploitation or utilization and they belong to the Union; the concessionaire is guaranteed ownership of the proceeds from the working thereof.

Paragraph 1. The prospecting for and mining of mineral resources and the utilization of the potentials referred to in the main provision of this Article may be carried out only under authorization or concession from the Union granted in the national interest and by Brazilians or a Brazilian company with national capital, pursuant to law which shall establish the specific conditions when such activities take place in the strip of territory along the nation's borders or on Indian lands.

Paragraph 2. The owner of the soil is assured a share of the results of the mining, in such manner and to such extent as the law may provide.

Paragraph 3. An authorization to prospect shall always be granted for a specific length of time, and the authorizations and concessions for which provision is made in this article may not be assigned or transferred, in their entirety or in part, without prior consent from the authority which granted them.

Paragraph 4. The utilization of a potential low-capacity source of renewable energy shall not require an authorization or concession.

Article 177.

The Union has a monopoly over the following:

I. Prospecting and working of deposits of petroleum, natural gas, and other fluid hydrocarbons;

II. Refining of domestic and foreign petroleum;

III. Import and export of products and basic derivatives resulting from the activities for which provision is made in the previous subsections of this article;

IV. Maritime transport of crude petroleum of domestic origin or of basic petroleum derivatives produced in Brazil, as well as the pipeline transportation of crude petroleum and its derivatives and natural gas regardless of origin;

V. The prospecting, mining, enrichment, processing, industrial use of, and commerce in nuclear ores and minerals and derivatives thereof;

Paragraph 1. The monopoly for which provision is made in this Article includes the risks and results flowing from the activities mentioned therein; the Union is prohibited from assigning or granting any kind of participation, in cash or as a percentage, in the exploitation of petroleum or natural gas deposits except as provided in Article 20, Paragraph 1.

Paragraph 2. The law shall make provision concerning the transportation and utilization of radioactive materials within Brazilian territory.

Article 178.

The law shall make provision concerning:

I. The structure of air, maritime, and land transportation;

II. The predominance of domestic ship operators and Brazilian-flag and Brazilian-registry vessels and those flying the flag of or registered in the exporter or importer nation;

III. Bulk cargo transport;

IV. Utilization of fishing vessels and other vessels;

Paragraph 1. The structuring of international transportation shall comply with agreements signed by the Union, with due regard for the principle of reciprocity.

Paragraph 2. The ship operators, shipowners, commanding officers, and at least two-thirds of the crew on Brazilian vessels shall be Brazilians.

Paragraph 3. Only Brazilian vessels may engage in coastwise and interior shipping, except in cases of public necessity as may be provided by law.

Article 179.

The Union, the States, and the Federal District and the Municipalities shall dispense differentiated legal treatment to microenterprises and small companies, as defined in law, in order to provide them with incentives by simplifying their administrative, tax, social security, and credit obligations or by eliminating or reducing them under the law.

Article 180.

The Union, the States, the Federal District, and the Municipalities shall promote and encourage tourism as a factor in socioeconomic development.

Article 181.

An individual or legal entity resident or domiciled in Brazil must have authorization from the appropriate authority before responding to a request from a foreign administrative or judiciary authority to provide documents or information of a commercial nature.

Chapter II - Urban Policy

Article 182.

The objective of urban development policy as carried out by the municipal government in accordance with general guidelines established by law is to structure the full development of the social functions of the city and guarantee the welfare of its inhabitants.

Paragraph 1. The master plan approved by the municipal legislature—mandatory for cities with more than 20,000 population—is the basic instrument of urban development and expansion policy.

Paragraph 2. Urban property fulfills its social function when it meets the fundamental requirements of the structure of the city as expressed in the master plan.

Paragraph 3. Expropriations of urban real estate properties shall be effected after fair monetary indemnification has been given.

Paragraph 4. The municipal government, acting under a specific law for an area included in the master plan, is authorized to demand, pursuant to the federal law, that the owner of urban land on which nothing has been built and that is unused or underutilized take steps to put it to suitable use, under penalty of the following, successively:

I. Mandatory subdivision or construction;

II. Assessment of the tax on ownership of urban buildings and land at progressive rates that increase with the passage of time;

III. Expropriation, with payment to be made in instruments of public indebtedness issued with the prior approval of the Federal Senate and redeemable in annual, equal, and successive installments over a period of as many as 10 years, the real value of the indemnification and interest at the legal rates being assured.

Article 183.

One who possesses an urban area not exceeding 250 square meters without interruption or opposition for a period of 5 years, as though it were his own, and uses it for his residence or that of his family shall acquire ownership of it, provided that he does not own another urban or rural property.

Paragraph 1. The ownership title or document granting usage right shall be conferred on either the man or the woman, or on both, regardless of marital status.

Paragraph 2. That right shall not be recognized to the same possessor more than once.

Paragraph 3. Public real estate properties shall not be acquired by usucapio.

**Chapter III - Agricultural and Land Ownership Policy,
Agrarian Reform**

Article 184.

The Union has authority to expropriate, in the interest of society for purposes of agrarian reform, a rural property that is not fulfilling its social function and to do so by fair indemnification, paid in advance in the form of instruments of agrarian indebtedness that include a clause preserving their real value and are redeemable within a maximum of 20 years beginning in the second year following issue; the manner in which [the expropriated property] is to be used shall be defined by law.

Paragraph 1. Useful and necessary improvements shall be indemnified in cash.

Paragraph 2. The decree which declares the property as being of interest to society for purposes of agrarian reform authorizes the Union to file suit to expropriate it.

Paragraph 3. Complementary law shall provide for a special adversary proceeding, summary in nature, to be used in court in expropriation suits.

Paragraph 4. The total volume of instruments of agrarian indebtedness shall be established annually in the budget, along with the amount of funds to be used to implement the agrarian reform program during the fiscal year.

Paragraph 5. The transactions by which properties expropriated for purposes of agrarian reform are transferred are exempt from federal, state, and municipal taxes.

Article 185.

The following are not subject to expropriation for purposes of agrarian reform:

I. Small and medium-sized rural properties, defined as such by law, provided that the owner of same owns no other;

II. Productive property.

Sole Paragraph. The law shall guarantee special treatment to productive property and shall set rules for the fulfillment of the requirements relating to its social function.

Article 186.

The social function is fulfilled when a rural property satisfies, simultaneously and according to criteria and degrees of requirement established by law, the following requisites:

I. Rational and appropriate use;

II. Appropriate use of the available natural resources, and preservation of the environment;

III. Observance of the provisions that govern labor relations;

IV. Exploitation in a manner that favors the welfare of the owners and the workers.

Article 187.

Agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector—involving both rural producers and workers—as well as by the marketing, warehousing, and transportation sectors, considering the following in particular:

I. Credit and fiscal instruments;

II. Prices compatible with the costs of production and assurance of marketability;

III. Encouragement of research and technology;

IV. Technical assistance and rural extension services;

V. Crop insurance;

VI. The cooperative movement;

VII. Rural electrification and irrigation;

VIII. Housing for the rural worker.

Paragraph 1. Included in the agricultural planning process are agroindustrial, stockraising, fisheries, and forestry activities.

Paragraph 2. Agricultural policy actions and agrarian reform actions shall be rendered compatible with each other.

Article 188.

Public and unoccupied lands shall be used in a manner compatible with agricultural policy and the national agrarian reform plan.

Paragraph 1. Public lands in excess of 2,500 hectares may not be transferred or granted for any reason to an individual or legal entity, even through a representative, without prior approval of the National Congress.

Paragraph 2. The provision in the previous Paragraph does not apply to transfers or grants of public lands for purposes of agrarian reform.

Article 189.

The beneficiaries of the distribution of rural real estate under agrarian reform shall receive a title of ownership, or document granting usage rights, that is non-negotiable for a period of 10 years.

Sole Paragraph. A title of ownership or a document granting usage rights shall be conferred on either the man or the women, or on both, regardless of marital status, under terms and conditions as provided by law.

Article 190.

The law shall regulate and restrict the acquisition or the leasing of rural property by a foreign individual or legal entity and shall determine the cases that will require authorization by the National Congress.

Article 191.

One who, not being the owner of a rural or urban property, possesses an area of land situated in a rural zone and not larger than 50 hectares as though it were his own for 5 years without interruption or opposition, making it productive by his own efforts or those of his family and having his residence thereon, shall acquire ownership of it.

Sole Paragraph. Public real estate properties shall not be acquired by usucapio.

Chapter IV - The National Financial System

Article 192.

The national financial system, structured in such a manner as to promote the balanced development of Brazil and serve the interests of the community, shall be regulated by complementary law, which shall make provision for such aspects as the following:

I. Authorization for the functioning of the financial institutions, with official and private banking institutions being assured access to all the instruments of the bank financial market; those institutions shall be prohibited from participating in activities for which no provision is made in the authorization that is the subject of this Subsection;

II. Authorization and functioning of the insurance, pension fund, and capitalization establishments, as well as the official supervisory body and the official reinsurance body;

III. The conditions for the participation by foreign capital in the institutions to which the previous subsections refer, with special consideration being given to the following:

(a) The national interest;

(b) International agreements;

IV. The organization, functioning, and prerogatives of the Central Bank and other public and private financial institutions;

V. The requirements for the appointment of members of the board of directors of the Central Bank and other financial institutions, as well as the prohibitions applicable to them after serving in such positions;

VI. Creation of a fund or insurance to protect the public's economic interest by guaranteeing loans, investments, and deposits up to a specific value, participation by Union funds being prohibited;

VII. Criteria restricting the transfer of savings from regions where the income is lower than the national average to others that are more fully developed;

VIII. The functioning of credit cooperatives and the requirements to be met in order that they may have the operational conditions and structure that are characteristic of the financial institutions.

Paragraph 1. The authorization referred to in Subsections I and II of this Article shall be non-negotiable and nontransferrable but shall permit the transfer of control from the titular legal entity when granted without compensation pursuant to the national financial system law to a legal entity whose directors have technical capability, unblemished reputation, and proven economic capacity compatible with the undertaking.

Paragraph 2. Financial resources relating to regional programs and projects that are the responsibility of the Union shall be deposited in its regional credit institutions and invested by them.

Paragraph 3. Real interest rates, included therein the commissions and any other remunerations connected with the granting of the credit, may not exceed 12 percent per annum; charging rates above this limit shall be deemed usury, a crime that is punishable, in all its modes, under such terms as the law may determine.

Title VIII - The Social Order

Chapter I - General Provision

Article 193.

The social order is based on the primacy of labor and its objectives are welfare and social justice.

Chapter II - Social Security

Section I - General Provisions

Article 194.

The social security system is an integrated whole composed of initiatives by the various levels of government and by society and intended to assure rights relating to health, pensions, and social assistance.

Sole Paragraph. The Government has authority, pursuant to law, to organize the social security system on the basis of the following objectives:

- I. Universality of coverage and service;
- II. Uniformity and equivalency of benefits and services for both urban and rural populations;
- III. Selectivity and distributivity in the furnishing of benefits and services;
- IV. Irreducibility of the value of the benefits;
- V. Equity in the manner in which participants share in defraying the costs of the system;
- VI. Diversity in the basis of financing;
- VII. Democratic and decentralized administrative management, with participation by the community—especially the workers, businessmen, and retirees.

Article 195.

The social security system shall be financed by the entire society, directly and indirectly pursuant to law, from funds obtained from the budgets of the Union, the States, the Federal District and the Municipalities and from the following social contributions:

- I. From the employers, assessed against the payroll, billings, and profits;
- II. From the workers;
- III. On the revenue from certain kinds of gambling ["concurso de prognosticos"].

Paragraph 1. The revenues of the States, the Federal District, and the Municipalities that are earmarked for the social security system shall appear in their respective budgets and are not a part of the budget of the Union.

Paragraph 2. The proposed social security budget shall be drafted in an integrated manner by the agencies responsible for the health, pension, and social assistance components of the system in light of the goals and priorities established in the budgetary guidelines law, with each area being assured authority to manage its funds.

Paragraph 3. A legal entity that is in debt to the social security system as established in law may not contract with the government or receive benefits or tax or credit incentives.

Paragraph 4. The law may institute other sources of funds to guarantee the maintenance or expansion of the social security system, the provision in Article 154(I) having been obeyed.

Paragraph 5. No social security benefit or service may be created, increased, or extended unless the cost thereof is fully covered by a corresponding source of funds.

Paragraph 6. Payment of the social contributions discussed in this article may only be demanded after 90 days have elapsed since the law that instituted or modified them was published; the provision in Article 150(III)(b) does not apply to them;

Paragraph 7. Charitable institutions that offer social assistance and satisfy the requirements of law are exempt from the requirement to contribute to the social security system.

Paragraph 8. Rural producers, partners, sharecroppers and tenant farmers, and those engaged in rudimentary prospecting and traditional fishing activities, as well as their spouses, and who carry out their activities under a family business regime without permanent employees shall contribute to social security through the assessment of a certain rate on the proceeds from the marketing of their production and shall be entitled to benefits, pursuant to law.

Section II - Health

Article 196.

All are entitled to good health and it is the duty of the State to guarantee this right by adopting social and economic policies directed at reducing the risk of illnesses and other injuries and affording universal and egalitarian access to the actions and services that promote, protect, and foster recovery of good health.

Article 197.

Health actions and services are of public importance and the government has authority to provide, pursuant to law, for their regulation, supervision, and control; such actions and services may be performed and provided either directly or through third parties, as well as by private individuals or legal entities.

Article 198.

Public health actions and services are part of a regional network that is structured on the basis of a hierarchy; they constitute a unitary system organized in accordance with the following guidelines:

I. Decentralization, with a single executive body at each level of government;

II. Integrated service that gives priority to preventive activities without prejudice to services of assistance;

III. Participation by the community;

Sole Paragraph. The unitary health system shall be financed, pursuant to Article 195, with funds from the social security budget, the Union, the States, the Federal District, and the Municipalities, in addition to other sources;

Article 199.

Private enterprise is free to provide health services;

Paragraph 1. Private institutions may participate in this unitary health system on a complementary basis, according to the guidelines of this system, by contracting under public law or executing a formal agreement; preference shall be given to philanthropic, nonprofit entities.

Paragraph 2. The allocation of public funds to aid or subsidize private for-profit institutions is prohibited.

Paragraph 3. The direct or indirect participation of foreign companies or foreign capital in the providing of health services in Brazil is prohibited, except as provided by law.

Paragraph 4. The law shall provide concerning conditions and requirements to facilitate the removal of organs, tissues and human substances for transplant, research, and treatment as well as the collection, processing, and transfusion of blood and blood products; all forms of commerce in such items are prohibited.

Article 200.

The unitary health system has authority to perform the following functions, in addition to any other prerogatives, pursuant to law;

I. Control and supervise procedures, products, and substances of interest to the health field and participate in the production of medications, equipment, biologicals, blood derivatives, or other inputs;

II. Perform sanitary and epidemiological monitoring functions, and engage in worker health activities;

III. Structure the training of human resources in the health field;

IV. Participate in formulating policy and implementing actions in the area of basic sanitation services;

V. Increase scientific and technological development within its field of action;

VI. Supervise and inspect foods—this function to include verification of their nutritional content—as well as beverages and waters for human consumption;

VII. Participate in the control and supervision of the production, transportation, storage and use of psychoactive, toxic, and radioactive substances;

VIII. Collaborate in protecting the environment, including the job environment.

Section III - Pensions ["Previdencia Social"]

Article 201.

The pension system plans, which are funded by contributions, shall meet the following needs, pursuant to law:

I. Coverage of events of illness, disability, and death, including the results of job accidents, old age, and confinement;

II. Assistance with the support of dependents of low-income insureds;

III. Maternity protection, especially protection of pregnant women;

IV. Protection for the worker who is involuntarily unemployed;

V. Pension upon the death of an insured, either male or female, paid to the spouse or companion and dependents, the provision in Paragraph 5 of Article 202, having been obeyed.

Paragraph 1. Any person may participate in the benefits of the social pension system by contributing in the manner prescribed by the pension plans.

Paragraph 2. Readjustment of the benefits in order to preserve their real value on a continuing basis, according to criteria defined by law, is hereby assured.

Paragraph 3. All covered wages that are considered in calculating the benefit shall be corrected to reflect changing currency values ["correcao monetaria"];

Paragraph 4. The customary gains received by the employee, however earned, shall be incorporated into his wages for purposes of social security contributions in order that they may affect benefits, in such cases and forms as the law may provide.

Paragraph 5. No benefit that substitutes for covered wages or for income from work performed by the insured shall have a monthly value lower than that of the [monthly] minimum wage;

Paragraph 6. The Christmas bonus paid to retirees and pensioners shall be based on the value of their benefits for the month of December of each year.

Paragraph 7. The pension system shall offer complementary and optional group insurance, to be funded by additional contributions.

Paragraph 8. The government is hereby prohibited from subsidizing or aiding private pension systems that are operated for profit.

Article 202.

Retirement benefits pursuant to law are hereby assured and are to be calculated on the basis of the average of the covered wages for the final 36 months, corrected from month to month to reflect changing currency values, with verification as to whether covered wages were properly readjusted to preserve their real values; moreover, the following conditions for retirement shall be obeyed:

I. At age 65 for men and at age 70 for women, with the age requirement lowered by 5 years for rural workers of either sex and for those who work under the regime of a family business, which includes rural producers and those engaged in rudimentary prospecting and traditional fishing activities;

II. After 35 years of service for men, and after 30 years for women, or earlier if subjected to special working conditions that are injurious to health or physical safety, as defined by law;

III. After 30 years of active service in the teaching profession for male teachers, and after 25 years for female teachers;

Paragraph 1. Proportional retirement benefits may be awarded after 30 years of service for men and 25 years of service for women.

Paragraph 2. For purposes of retirement benefits, assurance is hereby given of the reciprocal counting of contributory service performed in public administration and in private activity, both rural and urban, in which cases the different pension systems shall compensate each other financially pursuant to criteria established by law.

Section IV - Social Assistance

Article 203.

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security; the objectives of this service are as follows:

I. Protection of the family, of motherhood, infancy, adolescence, and old age;

II. Shelter for needy children and adolescents;

III. Promotion of integration into the labor market;

IV. The training and rehabilitation of handicapped individuals and the promotion of their integration into community life;

V. Guarantee of a monthly benefit, equal to the monthly minimum wage, to handicapped persons and the elderly who attest that they have no means to support themselves or to obtain support from their families, as may be provided by law.

Article 204.

Governmental actions in the social assistance area shall be carried out using funds from the social security budget, as provided in Article 195, in addition to other sources, and organized on the basis of the following guidelines:

I. Political and administrative decentralization, with coordination and general rules falling within the federal sphere, and coordination and execution of the respective programs being the province of the States and Municipalities and the charitable and social assistance entities;

II. Participation by the public, through its representative organizations, in policy formulation and the monitoring of actions at all levels.

Chapter III - Education, Culture, and Sports

Section I - Education

Article 205.

Education, a right of all and a duty of the State and the family, shall be promoted and encouraged with the collaboration of society in order to fully develop the individual, prepare him for the exercise of citizenship, and qualify him for work.

Article 206. Instruction shall be administered on the basis of the following principles:

I. Equality of conditions for access to and continued attendance at school;

II. Freedom to learn, teach, research, and disseminate thought, art, and knowledge;

III. Pluralism of pedagogic ideas and concepts, and coexistence between public and private educational institutions;

IV. Public instruction free of charge in official establishments;

V. Respect for the teaching professional's, who shall be guaranteed, under the law, a career ladder for the public teaching profession that includes a wage floor and affords entry solely by public competition based on examinations and presentation of credentials; a single legal regime is assured for all the institutions maintained by the Union;

VI. Democratic management of public instruction, pursuant to law;

VII. Guarantee of standards of quality;

Article 207.

The universities shall enjoy autonomy in didactical/scientific, administrative, and financial and property management matters.

Sole Paragraph. Higher education shall be provided in observance of the principle that instruction, research, and extension cannot be disassociated from each other.

Article 208.

The duty of the State in terms of education shall be discharged by guarantee of the following:

I. Compulsory elementary instruction, free of charge, even for those who did not have access to it at the proper age;

II. Gradual extension to intermediate education of the features of compulsory attendance and provision free of charge.

III. Specialized educational services to handicapped individuals, preferably within the regular school system;

IV. Service to children from birth to age 6 in day care centers and preschools;

V. Access to higher levels of instruction, research, and artistic creation, according to the capabilities of each individual;

VI. Furnishing of regular evening instruction, suited to the conditions of those being educated;

VII. Service to pupils at the elementary level through supplementary programs that provide educational and pedagogical materials, transportation, meals, and health assistance.

Paragraph 1. The public has the right to demand access to free and compulsory education.

Paragraph 2. Failure of the government to offer compulsory instruction, or offering it in an improper manner, can result in the competent authority being held liable;

Paragraph 3. The Government has the authority to take a census of the pupils in the elementary educational system, call the roll, and take action with the parents or guardians to see that children attend school.

Article 209.

Private enterprise is free to provide instruction, with due regard for the following conditions:

I. Compliance with the general rules of Brazilian education;

II. Authorization and accreditation by the government authority;

Article 210.

Certain minimum elements of content shall be established for the elementary educational system in order to ensure a common body of basic knowledge and respect for national and regional cultural and artistic values.

Paragraph 1. Religious instruction, enrollment in which is optional, shall constitute a subject matter taught during the normal hours of the public schools in the elementary educational system.

Paragraph 2. Regular elementary education shall be administered in the Portuguese language; Indian communities are also assured the right to use their mother tongues and their own teaching methods.

Article 211.

The Union, the States, the Federal District, and the Municipalities shall organize their instructional systems under a regimen of collaboration.

Paragraph 1. The Union shall organize and finance the federal and Territorial instructional systems and shall provide technical and financial assistance to the States, the Federal District, and the Municipalities for the development of their instructional systems and the awarding of priority attention to compulsory schooling.

Paragraph 2. The Municipalities shall give priority to actions in elementary and preschool education.

Article 212.

On an annual basis, the Union shall never allocate less than 18 percent, and the States, Federal district, and the Municipalities shall allocate at least 25 percent of tax revenues, including revenues from transfers, to the maintenance and development of education.

Paragraph 1. The portion of collected taxes which is transferred by the Union to the States, the Federal District, and the Municipalities, or by the States to their

respective Municipalities is not considered, for purposes of the calculation provided for in this article, as being revenue of the government that transfers it.

Paragraph 2. The federal, state, and municipal education systems and the funds allocated pursuant to Article 213 shall be considered for purposes of compliance with the provision in the main part of this Article.

Paragraph 3. Public funds shall be distributed in a manner that assures that priority is given to serving the needs of compulsory education, pursuant to the national education plan.

Paragraph 4. The supplementary meals and health services programs for which provision is made in Article 208(VII) shall be financed with funds from the social contributions and other budgetary funds.

Paragraph 5. Federal public education shall have an additional source of financing in the form of the education allowance which is paid, pursuant to law, by the companies; firms may deduct from such payments the investments they make in the elementary education of their employees and dependents thereof.

Article 213.

Public funds shall be earmarked for the public schools, but may be allocated to community, religious, or charity schools, as defined in law, provided that they:

I. Attest to not-for-profit status and invest their financial surpluses in education;

II. Give assurances that their patrimony will be allocated to another community, charity, or religious school or to the government, in the event they close down their activities.

Paragraph 1. The funds that are the subject of this Article may be allocated to scholarships for elementary and intermediate instruction, pursuant to law, for those who demonstrate insufficiency of funds, when there are no vacancies or regular courses in the public system in the locality of the pupil's residence; the government is obligated to invest, on a priority basis, in the expansion of its system in that locality.

Paragraph 2. University research and extension activities may receive financial support from the government.

Article 214.

The law shall create a national education plan, which shall be a multi-year plan, in order to develop and integrate the educational system at its various levels and incorporate the actions of the government that would lead to:

I. Eradication of illiteracy;

II. Universalization of school attendance;

III. Improvement of the quality of instruction;

IV. Vocational training;

V. The humanistic, scientific, and technological advancement of Brazil.

Section II - Culture

Article 215.

The State shall guarantee everyone the full exercise of their cultural rights and access to the sources of the national culture and shall support and encourage respect for and dissemination of cultural expression.

Paragraph 1. The State shall protect the manifestations of folk, Indian, and Afro-Brazilian culture and those of other groups that are participants in the national civilization process.

Paragraph 2. The law shall provide for the identification of commemorative dates of great significance for the various ethnic segments of national society.

Article 216.

Brazilian cultural patrimony is deemed to be comprised of items of a material or spiritual nature, considered individually or as a group, that bear witness to the identity, the actions, or the memory of the different groups that formed Brazilian society, among which are included:

I. Forms of expression;

II. Modes of creating, doing, and living;

III. Scientific, artistic, and technological creations;

IV. The works, objects, documents, buildings, and other spaces used for cultural/artistic manifestations;

V. The urban complexes and sites of historical, scenic, artistic, archaeological, paleontological, ecological and scientific value.

Paragraph 1. The government, with the collaboration of the community, shall promote and protect the Brazilian cultural patrimony by means of inventories, records, vigilance, the registration of certain properties as national historical or cultural sites ["tombamento"], expropriation, and other forms of safeguarding and preservation.

Paragraph 2. It is the province of the public administration, pursuant to law, to manage the government archives of documents and adopt measures for authorizing whomever may need to consult them to do so.

Paragraph 3. The law shall establish incentives for the production and dissemination of cultural assets and values.

Paragraph 4. Damage and threats to the cultural patrimony shall be punished, pursuant to law.

Paragraph 5. All documents and sites that hold historical relics of the former settlements of runaway slaves ["quilombos"] are hereby registered as national historical/cultural sites.

Section III - Sports

Article 217.

It is the duty of the State to foster the formal and informal playing of sports as the right of each individual, the following being observed:

I. Autonomy of the sports administrative entities and sports associations in terms of their organization and functioning;

II. The allocation of public funds to the promotion, as a priority, of educational sports and in specific cases to promotion of high-revenue sports;

III. Differential treatment for professional and amateur sports;

IV. Protection and encouragement of sports created in Brazil.

Paragraph 1. The Judicial Branch shall only hear suits relating to sports discipline and competitions after all recourse through the sports justice system, regulated by law, has been exhausted.

Paragraph 2. The sports justice system shall have a maximum of 60 days from the date proceedings are instituted in which to hand down a final decision.

Paragraph 3. The government shall encourage leisure, as a form of social advancement.

Chapter IV - Science and Technology

Article 218.

The State shall promote and encourage scientific development, research, and the acquiring of technological capabilities.

Paragraph 1. Basic scientific research shall receive priority treatment from the State, in view of the public good and the advancement of the sciences.

Paragraph 2. Technological research shall be predominantly directed toward the solution of Brazilian problems and the development of the national and regional productive system.

Paragraph 3. The State shall support human resources training in the areas of science, research, and technology and shall grant special working conditions and resources to those who concern themselves with this activity.

Paragraph 4. The law shall support and stimulate those companies that invest in research, creation of appropriate technology for Brazil, and basic and advanced training of their human resources, and that use methods of remuneration that assure the employee, apart from his wages or salary, a share in the economic gains resulting from the productivity of his labor.

Paragraph 5. The States and the Federal District are authorized to permanently designate part of their budgetary revenues for public entities that promote education and research in science and technology.

Article 219.

The internal market is part of the national patrimony and shall be given incentives in order to make it feasible to achieve cultural and socioeconomic development, the welfare of the people, and the technological autonomy of the nation, pursuant to federal law.

Chapter V - Communications

Article 220.

The manifestation in any manner of thought, creation, expression, and information through any process or vehicle shall not be restricted in any way, the provisions of this Constitution being observed.

Paragraph 1. No law shall contain a provision that may constitute an impediment to the full freedom of journalistic information in any vehicle of social communication, the provision in Article 5 (IV), (V), (X), (XIII) and (XIV) being observed.

Paragraph 2. Any and all censorship of a political, ideological, or artistic nature is prohibited.

Paragraph 3. The following are the province of federal law:

I. Regulate public amusements and entertainments; the government has a duty to inform the public as to their nature, the age brackets for which they are not recommended, and the sites and times at which their presentation would appear to be unsuitable;

II. Establish legal means to guarantee the individual and the family the opportunity to defend themselves against radio and television programs or programming that would violate the provision of Article 221, as well as from the advertising of products, practices, and services that may be hazardous to the health and the environment.

Paragraph 4. Commercial advertising of tobacco, alcoholic beverages, agricultural pesticides, medicines, and therapies shall be subject to legal restrictions pursuant to Subsection II of Paragraph 3 and shall contain, whenever necessary, a warning concerning the harm resulting from their use.

Paragraph 5. The media may not, directly or indirectly, be the object of monopoly or oligopoly.

Paragraph 6. The publication of a printed vehicle of communication does not require an official license.

Article 221.

Production and programming by radio and television broadcasters shall satisfy the following principles:

I. Preference for educational, artistic, cultural, and informative purposes.

II. Promotion of the national and regional culture and encouragement of independent production directed toward the dissemination thereof.

III. Regionalization of cultural, artistic, and journalistic production, according to percentages established by law;

IV. Respect for the ethical and social values of the individual and the family.

Article 222.

Ownership of a journalistic enterprise, or a company that broadcasts sound or sound and images, is restricted to native-born Brazilians or those who have been naturalized citizens for more than 10 years; the responsibility for their administration and intellectual guidance rests with such persons.

Paragraph 1. The participation of a legal entity in the capital of a journalistic or radio/television broadcasting company is prohibited, unless the legal entity is a political party or a company whose capital is owned exclusively by Brazilians identified by name.

Paragraph 2. The participation mentioned in the previous paragraph shall take the form of non-voting capital only, and may not exceed 30 percent of the company's capital.

Article 223.

The Executive Branch has the authority to grant and renew concessions, permits, and authorization for the service of sound or sound and image broadcasting, the principle of complementarity of the private, public, and government systems being observed.

Paragraph 1. The National Congress shall review the act [of granting a renewal] within the interval prescribed in Article 64, Paragraphs 2 and 4, counted from the date the message was received.

Paragraph 2. A decision not to renew a concession or permit shall require the approval of at least two-fifths of the National Congress, obtained via a roll call vote.

Paragraph 3. The act of granting or renewal shall only produce legal effects after consideration by the National Congress pursuant to the previous paragraphs.

Paragraph 4. Cancellation of the concession or permit, prior to the expiration thereof, is dependent upon a court decision.

Paragraph 5. Concessions or permits shall be valid for 10 years for radio broadcasters or 15 years for television broadcasters.

Article 224.

For the purposes of the provision in this chapter, the National Congress shall institute, as its auxiliary body and pursuant to law, a Council on the Media.

Chapter VI - The Environment

Article 225.

Everyone is entitled to an ecologically balanced environment, which is an asset of everyday use to the common man and essential to a healthy quality of life; this imposes a duty on the government and the community to protect and preserve it for the present and future generations.

Paragraph 1. In order to assure that this right is effectively available, it is incumbent on the government to:

I. Preserve and restore essential ecological processes and arrange for the ecological management of species and ecosystems;

II. Preserve the diversity and integrity of the genetic patrimony of Brazil and oversee the entities that are engaged in research and manipulation of genetic material;

III. Define, in all the units of the Federation, the geographical spaces and components thereof that are to be specially protected, these may be changed or deleted only by law, and any use that compromises the integrity of the features which justify protection of such areas is prohibited;

IV. Require, pursuant to law, that an environmental impact study be made prior to the installation of a project or activity that may potentially cause significant harm to the environment, and that the results of such study be publicized;

V. Control the production, marketing, and use of techniques, methods, and substances that pose a risk to life, the quality of life, and the environment;

VI. Promote environmental education at all levels of instruction and help to increase public awareness of the need to preserve the environment;

VII. Protect the flora and fauna; practices that place their ecological function at risk, lead to the extinction of species, or submit animals to cruel treatment are hereby prohibited;

Paragraph 2. Anyone who exploits mineral resources is obliged to restore the damaged environment by such technical means as may be required by the appropriate public agency, pursuant to law.

Paragraph 3. Behaviors and activities deemed injurious to the environment shall subject the violators, whether individuals or legal entities, to criminal and administrative penalties, apart from the obligation to repair the damages caused.

Paragraph 4. The Brazilian Amazonian forest, the Atlantic jungle, the Serra do Mar mountain range, the Mato Grosso Pantanal [swamp], and the Coastal Zone are part of the national patrimony and are to be utilized, pursuant to law, under terms and conditions that assure the preservation of the environment; this also applies to the use of the natural resources.

Paragraph 5. Lands vacated or taken over by the States through adjudication ["*acao discriminatoria*"] and needed in order to protect the natural ecosystems may not be made available for any purpose.

Paragraph 6. The location of power plants that employ a nuclear reactor must be defined in federal law; no such facility may be installed until such determination has been made.

Chapter VII - The Family, Children, Adolescents, and the Elderly

Article 226.

The family, which is the basis of society, receives special protection from the State.

Paragraph 1. Marriage is contracted in a civil ceremony, for which no charge shall be made.

Paragraph 2. The religious ceremony of marriage produces civil effects, pursuant to law.

Paragraph 3. A stable union between a man and a woman living as a family unit is recognized for purposes of the protection afforded by the State, and the law should facilitate the conversion of that union into marriage.

Paragraph 4. A community formed by either of the parents and their offspring shall also be considered as being a family unit.

Paragraph 5. The rights and duties pertaining to conjugal society are exercised equally by the man and by the woman.

Paragraph 6. A civil marriage may be dissolved by divorce, following legal separation for more than 1 year in the cases set forth by law, or after a proven *de facto* separation for more than 2 years.

Paragraph 7. Founded on the principles of the dignity of the human person and responsible parenthood, family planning is a matter on which the couple may freely decide; the State is authorized to furnish educational and scientific resources for the exercise of that right, and any form of coercion on the part of official or private institutions is prohibited.

Paragraph 8. The State shall assure assistance to the family in the person of each one of its members, and shall create mechanisms by which to deter violence within the realm of its relationships.

Article 227.

It is the duty of the family, of society, and of the State to assure the child and the adolescent, as a matter of absolute priority, the right to life, health, nutrition, education, leisure time, vocational training, culture, dignity, respect, liberty, and the fellowship of the family and community, in addition to making them safe from any form of neglect, discrimination, exploitation, violence, cruelty and oppression.

Paragraph 1. The State shall promote programs of integrated assistance to the health of children and adolescents, nongovernmental entities being permitted to participate in same, obeying the following precepts:

I. Allocation of a percentage of the public funds appropriated to health to assistance of mothers and children;

II. Creation of specialized programs of prevention and assistance for those who are physically, sensorially, or mentally handicapped, as well as programs for the social integration of the handicapped adolescent through training in occupational and daily living skills and the facilitation of access to community goods and services, along with the elimination of prejudices and architectural obstacles.

Paragraph 2. The law shall provide concerning rules for building public streets, parks, and buildings and manufacturing mass transit vehicles so as to ensure suitable access by handicapped persons.

Paragraph 3. The right to special protection shall cover the following aspects:

I. Eligibility for employment at 14 years, as a minimum, the provision in Article 7 (XXXIII) being observed;

II. Guarantee of rights under social security and labor law;

III. Guarantee of access to schooling for the adolescent worker;

IV. Guarantee that the [minor] will be fully and formally informed of a charge against him resulting from an infraction, will be treated on the basis of equality in the [judicial] procedural relationship, and be defended by a qualified professional, according to the provisions of specific legislation concerning guardianship;

V. Obedience, in the application of any measure entailing deprivation of liberty, to the principles of brevity, exceptional treatment, and respect for the special status of an individual who is in the process of developing;

VI. Encouragement by the government through legal assistance, fiscal incentives, and subsidies created pursuant to law, of those who receive and care for the orphaned or abandoned child or adolescent;

VII. Prevention programs and other programs offering specialized service to children and adolescents who are addicted to narcotics and similar drugs.

Paragraph 4. The law shall severely punish the abuse, violent treatment, and sexual exploitation of children and adolescents.

Paragraph 5. The government shall assist the adoption process pursuant to law, and such law shall determine the instances and conditions under which aliens may adopt.

Paragraph 6. Sons and daughters, whether or not they are offspring of the marriage, or if adopted, shall have the same rights and eligibilities; discriminatory designations of any sort relating to the filial relationship are prohibited.

Paragraph 7. In implementing the rights of children and adolescents, the provision in Article 204 shall be taken into consideration.

Article 228.

Minors under the age of 18 may not be charged under criminal law, subject to the rules of special legislation;

Article 229.

Parents have the duty to assist, rear, and educate their minor children and children who have attained majority have the duty to help and support their parents in old age, need, or illness.

Article 230.

The family, society, and the State have the duty to protect the elderly and to assure their participation in the community, defending their dignity and welfare and guaranteeing them the right to life.

Paragraph 1. It is preferable that programs to assist the elderly be carried out in their homes.

Paragraph 2. Those over the age of 65 are guaranteed the right to travel free of charge on urban mass transit vehicles.

Chapter VIII - The Indians

Article 231.

Indian social structure, customs, languages, beliefs, and traditions are recognized, as well as their native rights to the lands that they traditionally occupy, it being the province of the Union to establish the boundaries thereof and to protect all the [Indian] assets and see that same are respected.

Paragraph 1. Lands traditionally occupied by the Indians are deemed to be those inhabited permanently by Indians, those used for their productive activities, those essential to the preservation of the environmental resources necessary to their welfare, and those necessary to their physical and cultural reproduction according to their uses, customs, and traditions.

Paragraph 2. Lands traditionally occupied by the Indians are intended for their permanent possession; they have exclusive usufruct rights to the riches of the soil, the rivers, and the lakes existing thereon.

Paragraph 3. The utilization of water resources, including potential sources of energy, and the prospecting for and mining of the mineral riches on Indian lands may only be carried out with authorization from the National Congress, after hearing the views of the affected communities; said communities are assured a share in the proceeds from the mining, pursuant to law.

Paragraph 4. The lands that are the subject of this article are nontransferrable, may not be made available for any purpose, and the rights to them are imprescriptible.

Paragraph 5. The removal of Indian groups from their lands is prohibited, except ad referendum by the National Congress in case of disaster or epidemic that places their population at risk, or in the interest of the

nation's sovereignty following a decision of the National Congress; in any event, their immediate return after cessation of the risk is guaranteed.

Paragraph 6. Acts having as their object the occupation, dominion, and possession of the lands to which this article refers, or the exploitation of the natural riches of the soil, the rivers, and the lakes existing thereon, are null, void, and extinct except as regards an important public interest of the Union as may be provided in complementary law; nullity and extinction do not generate any right to indemnification or to suits against the Union except, pursuant to law, regarding the improvements derived from the good faith occupation thereof.

Paragraph 7. The provision of Article 174, Paragraphs 3 and 4, do not apply to Indian lands.

Article 232.

The Indians, their communities and organizations have standing to sue to defend their rights and interests, and the Office of Government Attorney shall intervene in all the procedural acts.

Title IX - General Constitutional Provisions

Article 233.

For the purposes of Article 7(XXIX), a rural employer shall prove to the labor justice system, every 5 years, that he has satisfied his obligations toward his rural employee under labor law, and shall do so in the presence of the employee and the employee's union representative.

Paragraph 1. After compliance with the obligations mentioned in this article has been proven, the employer is exempted from any onus deriving from those obligations during the respective period. In the event the employee and his representative do not agree with the evidence presented by the employer, the labor justice system shall resolve the dispute.

Paragraph 2. The employee is reserved the right, in any event, to take action through the courts to obtain the sums he believes are owed him relative to the last 5 years.

Paragraph 3. The proof mentioned in this Article may, at the discretion of the employer, be presented at intervals of less than 5 years.

Article 234.

The Union is prohibited from directly or indirectly assuming, as the result of the creation of a new State, any responsibility for charges pertaining to the expenses for inactive personnel or fees and repayments of the internal or external debt of the public administration, including the indirect public administration.

Article 235.

During the first 10 years of existence of a new State, the following basic rules shall be observed:

I. The Legislative Assembly shall be composed of 17 deputies if the population of the State is less than 600,000, or 24 deputies if equal to or greater than that number but less than 1,500,000;

II. The Government shall have no more than 10 Departments ["Secretarias"];

III. The Tribunal of Accounts shall have three members, appointed by the Governor-elect from among Brazilians of proven reputation and widely recognized ability;

IV. The Court of Justice shall have seven appellate judges;

V. The first appellate judges shall be appointed by the Governor-elect, chosen in the following manner:

(a) Five from among magistrates over the age of 35 who are practicing in the area of the new State or of the original State;

(b) Two from among prosecutors meeting the same requirements, or attorneys of proven reputation and legal knowledge engaged in the profession for at least 10 years, the procedure established in the Constitution being obeyed;

VI. In the case of a State created from a Federal Territory, the first five appellate court judges may be selected from judges of law from any part of Brazil;

VII. In each judicial district, the first Judge of Law, the first Public Prosecutor, and the first Public Defender shall be appointed by the Governor-elect following a public competition based on examinations and submission of credentials;

VIII. Until the State constitution has been promulgated, attorneys of widely recognized ability and at least 35 years of age appointed by the Governor-elect and subject to dismissal *ad nutem* shall be responsible for the Office of Public Prosecutor, the Office of General Counsel, and for the Office of Defender General of the State;

IX. If the new State is the result of a conversion of a Federal Territory, the transfer of the financial charges from the Union to pay those public servants who opt to become employees of the new State and who had been part of the federal administration, shall take place as follows:

(a) During the sixth year of its establishment, the State shall assume 20 percent of the financial charges to defray the cost of paying the public servants, and the remainder shall still be the responsibility of the Union;

(b) During the seventh year, the charges to be paid by the State shall be increased to 50 percent and, in the eighth year, to 100 percent;

X. The appointments that follow the first appointments to the positions mentioned in this article shall be governed by the State Constitution;

XI. The budgetary expense for personnel may not exceed 50 percent of State revenues.

Article 236.

Notarial and registry services are performed privately, by delegation of government authority.

Paragraph 1. The law shall regulate the activities and govern the civil and criminal liability of the notaries public, registry officials, and the agents thereof, and shall define the means by which their actions are supervised by the Judicial Branch.

Paragraph 2. Federal law shall establish general rules for setting fees for the services rendered by the notaries public and the registries.

Paragraph 3. Entry into notarial and registry activity is dependent upon a public competition based on examinations and submission of credentials; no clerkship shall remain vacant for more than 6 months without either a competition being opened to fill it, or action being taken to abolish it.

Article 237.

The supervision and control over foreign trade, which is essential to the defense of the interests of the national treasury, shall be exercised by the Ministry of the Treasury.

Article 238.

The law shall structure the sale and resale of petroleum and carbureted alcohol fuels, as well as other fuels derived from renewable raw materials, the principles of this Constitution being respected.

Article 239.

The revenue from the contributions to the Profits Participation Program [P.I.S.] created by Complementary Law No 7 of 7 September 1970 and to the Program to Create a Patrimony for the Public Servants created by Complementary Law No 8 of December 3, 1970 shall, with the promulgation of this Constitution, be allocated to financing the unemployment insurance program and the bonus described in Paragraph 3 of this Article, under such terms as the law may provide.

Paragraph 1. At least 40 percent of the funds mentioned in the main provision of this Article shall be allocated to the financing of economic development programs through the National Economic and Social Development Bank [BNDES], with remuneration criteria that preserve their value.

Paragraph 2. The assets accumulated under the Profits Participation Program and the Program to Create a Patrimony for the Public Servants are preserved, and the criteria for withdrawal thereof in the situations provided for in specific laws are maintained, except for withdrawal due to marriage; the distribution of the revenues referred to in the main provision of this Article for deposit in the individual accounts of the participants is prohibited.

Paragraph 3. Employees who receive up to two minimum wages in remuneration per month from employers who contribute to the Profits Participation Program or the Program to Create a Patrimony for the Public Servants are assured the payment of one annual minimum wage, an amount which shall include the computation of the yield on the individual accounts; this applies to persons who were already participating in said programs as of the date of promulgation of this Constitution.

Paragraph 4. The financing of the unemployment insurance system shall receive an additional contribution from every company whose index of turnover in its labor force exceeds the average turnover for the sector, in the manner to be established by law.

Article 240.

The present compulsory payroll contributions from employers, intended for the private social service and vocational training entities associated with the union system, are hereby exempted from the provision in Article 195.

Article 241.

The principle of Article 39, Paragraph 1, concerning the careers disciplined by Article 135 of this Constitution applies to the career police chiefs.

Article 242.

The principle of Article 206(IV) does not apply to those official educational institutions that were created by state or municipal law and already existed on the date of promulgation of this Constitution, and which are not fully or predominantly supported by public funds.

Paragraph 1. Instruction in Brazilian history shall take into account the contributions made by the different cultures and ethnic groups in the formation of the Brazilian people.

Paragraph 2. Colegio Pedro II, a school located in the city of Rio de Janeiro, shall be maintained within the federal orbit.

Article 243.

Tracts of land in any region of Brazil where illegal crops of psychotropic plants are found shall be immediately expropriated and specifically designated for the settlement of farmers so that they may raise food and medicinal crops, without any indemnification to the owner and without prejudice to any other penalties provided by law.

Sole Paragraph. Any and all items of economic value that are seized as a result of illicit traffic in narcotics and similar drugs shall be confiscated and shall revert to the benefit of institutions and personnel that specialize in the treatment and rehabilitation of addicts, and also be used to finance and outfit the units that inspect, control, prevent, and repress the crime of traffic in those substances.

Article 244.

The law shall make provision for the adaptation of existing public streets, parks, and buildings and mass transit vehicles in order to ensure suitable access by handicapped persons, pursuant to the provision in Article 227, paragraph 1.

Article 245.

The law shall make provision for the instances and conditions under which the government shall furnish assistance to the needy heirs and dependents of persons victimized by premeditated crime, notwithstanding the civil liability of the one who committed the illegal act.

Translator Footnotes

1. In places beyond the extent of the tides, such lands extend 15 meters toward the shore as measured horizontally from the average ordinary flood line.

2. A 33-meter strip of land along the maritime, continental, or insular coast and along the edges of rivers and lakes in places where the effects of the tides are felt, calculated toward the shore horizontally from the average 1831 high-tide line.

3. Replaces the former Federal Appeals Court. See also Article 27 of the Transitory Constitutional Provisions Act.

4. "Tribunal de Justica," an appellate court which is the highest state court.

5. Official Portuguese usage does not employ the letter "k."

The Transitory Constitutional Provisions Act

Article 1.

The President of the Republic, the president of the Federal Supreme Court, and the members of the National Congress shall take an oath to maintain, defend, and carry out the Constitution, at the time of its promulgation.

Article 2.

On 7 September 1993, the electorate shall decide by plebescite concerning the form (republic or constitutional monarchy) and the system (parliamentary or presidential) of government which shall be in force in Brazil.

Paragraph 1. Ample dissemination of information concerning these forms and systems, to be provided free of charge by the mass media who hold public service concessions, shall be assured.

Paragraph 2. The Superior Electoral Court shall issue the rules to regulate this article, following the promulgation of the Constitution.

Article 3.

A review of this Constitution shall be conducted 5 years from the date of its promulgation, by vote of the absolute majority of the members of the National Congress convened in joint session.

Article 4.

The term of office of the current President of the Republic shall end on 15 March 1990.

Paragraph 1. The first election for the office of President of the Republic following the promulgation of the Constitution shall be held on 15 November 1989; the provision in Article 16 of the Constitution does not apply;

Paragraph 2. The irreducibility of the current representation of the States and the Federal District in the Chamber of Deputies is assured.

Paragraph 3. The terms of office of the governors and the lieutenant governors elected on 15 November 1986 shall end on 15 March 1991.

Paragraph 4. The terms of office of the current mayors, vice mayors, and councilmen shall end on 1 January 1989 with the investiture of those who are elected.

Article 5.

The provision of Article 16 and the rules of Article 77 of the Constitution do not apply to the elections scheduled for 15 November 1988.

Paragraph 1. Candidates for the elections of 15 November 1988 shall be required to have had voting residence in the district [of their candidacy] during the 4 months preceding the election, as a minimum; candidates who satisfy this requirement, if all the other requirements of law have been met, may be registered by the electoral justice authorities after the promulgation of the Constitution.

Paragraph 2. In the absence of specific rule of law, it shall be the province of the Superior Electoral Court to publish the necessary rules for the holding of the 1988 elections, with due regard for current legislation.

Paragraph 3. Any current federal and state legislators who are elected as vice mayors shall not lose their parliamentary mandate if called to serve as mayor.

Paragraph 4. The number of councilmen per Municipality shall be determined, for the representation to be elected in 1988, by the respective Regional Electoral Court, the limits stipulated in Article 29(IV) of the Constitution being respected.

Paragraph 5. For the elections of 15 November 1988—excepting those who already hold elective office—the spouses and the blood relatives or in-laws up to the second degree, or relatives by adoption of the President of the Republic, a state governor, the governor of the Federal District or of a mayor who has served more than half of his term are ineligible to run for any office in the territory of the jurisdiction of the officeholder.

Article 6.

During the 6 months following the promulgation of the Constitution, federal legislators, if convened in a number not less than 30, may petition the Superior Electoral Court to register a new political party; the manifesto, the by-laws, and the platform for such party, duly signed by the petitioners, shall accompany the petition.

Paragraph 1. Provisional registration, which shall be granted promptly by the Superior Electoral Court pursuant to this Article, grants the new party all the rights, duties, and privileges of the current parties, among which the right to participate, under its own slogan, in any elections that may be held during the 12 months following its formation.

Paragraph 2. A new party shall automatically forfeit its provisional registration if, during the 24 months following its formation, it does not obtain a final registration from the Superior Electoral Court in the manner prescribed by law.

Article 7.

Brazil shall advocate the formation of an international court of human rights.

Article 8.

Amnesty is hereby granted to those who, during the period between 18 September 1946 and the date of promulgation of the Constitution, were affected as a result of exclusively political motivation by acts of exception, institutional acts, or acts complementary thereto, to those who were included under Legislative Decree No 18 of 15 December 1961, and to those affected by Decree-Law No 864 of 12 September 1969; such persons are assured the promotions, during inactive status, to the position, employment post, or grade to which they would have been entitled had they been in active service; the lengths of time in active service prescribed in the current laws and regulations being obeyed, the characteristics and peculiarities of the career ladders of the civil and military public servants being respected, and the respective legal regimes being observed.

Paragraph 1. The provision in this Article shall only generate financial effects beginning on the date of promulgation of the Constitution; retroactive remuneration of any sort is hereby prohibited.

Paragraph 2. The benefits established in this Article are assured to workers in the private sector, union leaders, and representatives who for exclusively political reasons were punished, dismissed, or compelled to resign from the remunerated activities in which they were engaged, as well as those who were banned from engaging in occupational activities by virtue of overt pressures or covert official measures.

Paragraph 3. Citizens who were banned from practicing a specific professional activity in civilian life as a result of Ministry of Aviation Reserved Ordinances Nos S-50-GM5 of 17 June 1964 and S-285-GM5 shall be granted economic compensation, as provided in a law to be introduced by the National Congress, to take effect within 12 months of the promulgation of the Constitution.

Paragraph 4. Those who, by virtue of the institutional acts, have served elective terms of office as councilman without remuneration shall have these periods computed for purposes of retirement from public service and for social security.

Paragraph 5. The amnesty granted under this article applies to civilian public servants and to employees at all levels of government or in its foundations, or in public corporations, or mixed-economy firms under state control, except those in the military ministries, who have been punished or dismissed because their occupational activities were interrupted by virtue of a decision by their workers, or as a result of Decree-Law No 1632 of 4 August 1978, or for exclusively political reasons; those who were affected in 1979 or subsequently are assured of being rehired, the provision in Paragraph 1 being observed.

Article 9.

Those who, for exclusively political reasons, had their political rights revoked or suspended during the period from 15 July to 31 December 1969 by act of the then President of the Republic, may petition the Federal Supreme Court for recognition of the rights and benefits that were interrupted by the punitive acts, provided that they prove such acts were contaminated by serious flaws.

Sole Paragraph. The Federal Supreme Court shall hand down a decision within 120 days of the applicant's petition.

Article 10.

Until such time as the complementary law to which Article 7(I) of the Constitution refers is promulgated, the following apply:

I. The protection mentioned therein is limited to an amount that is not more than quadruple the percentage provided for in the main provision of Article 6 and Paragraph 1 of Law No 5107 of 13 September 1966;

II. Arbitrary dismissal, or dismissal without just cause, is prohibited as follows:

(a) Of an employee elected to a position of leadership on internal accident prevention committees, from registration of his candidacy until 1 year following the end of his term of office;

(b) Of a pregnant employee, from the time pregnancy is confirmed until 5 months following delivery.

Paragraph 1. Until the law implements the provision in Article 7(XIX) of the Constitution, the length of the paternity leave to which that subsection refers shall be 5 days.

Paragraph 2. Until later legal provision is made, the contributions to defray the cost of rural union activities shall be charged together with the rural land tax, by the same collection body.

Paragraph 3. During the first presentation of evidence of compliance with labor law obligations by a rural employer following promulgation of the Constitution and pursuant to Article 233 thereof, certification shall be provided to the labor courts that the contract and the updatings of the labor law obligations have been in good order throughout the period.

Article 11.

Each state Legislative Assembly having constituent powers shall draft a state Constitution within 1 year of the promulgation of the Federal Constitution, the principles thereof being obeyed.

Sole Paragraph. After the state Constitution has been promulgated, the Municipal Chambers shall, within 6 months, vote on their respective Charters, in two rounds of debate and voting, the provision in the Federal Constitution and in the state Constitution being respected.

Article 12.

Within 90 days of the promulgation of the Constitution, a Territorial Studies Commission shall be created, having ten members nominated by the National Congress and five by the Executive Branch, in order to submit studies on the nation's territory and drafts of bills concerning new territorial units, notably in Legal Amazonia and in areas that are pending resolution.

Paragraph 1. Within 1 year, said Commission shall submit the results of its studies to the National Congress so that, pursuant to the Constitution, they may be considered during the subsequent 12 months, after which interval the Commission shall promptly disband.

Paragraph 2. The States and the Municipalities shall, within 3 years from the promulgation of the Constitution arrange, either by agreement or arbitration, to delineate all their boundaries that are presently in dispute; to that end they may make changes and compensations in area for the sake of the natural geographic features, historical criteria, administrative considerations, and the convenience of the bordering populations.

Paragraph 3. Upon request by the affected States and Municipalities, the Union may assume the responsibility for the boundary definition work.

Paragraph 4. If, after the 3-year period from the date of promulgation of the Constitution has elapsed, the boundary definition work has not yet been completed the Union shall be authorized to determine the limits in the disputed areas.

Paragraph 5. The present boundaries between the State of Acre and the States of Amazona and Rondonia, according to cartographic and geodesic surveys made by the Tripartite Commission composed of representatives of the States and the specialized technical services of the Brazilian Institute of Geography and Statistics, are hereby recognized and ratified.

Article 13.

The State of Tocantins is hereby created, by dismemberment of the area described in this Article, and its installation shall take place on the 46th day following the election provided for in Paragraph 3, but not earlier than 1 January 1989.

Paragraph 1. The State of Tocantins is part of the Northern Region and adjoins the State of Goias along the northern boundaries of the Municipalities of Sao Miguel do Araguaia, Porangatu, Formoso, Minacu, Cavalcante, Monte Alegre de Goias, and Campos Belos, retaining on the east, north, and west the present boundaries of Goias with the States of Bahia, Piaui, Maranhao, Para, and Mato Grosso.

Paragraph 2. The Executive Branch shall designate one of the cities of the State as its provisional capital until final approval of the seat of government by its Constituent Assembly.

Paragraph 3. The governor, lieutenant governor, senators, federal deputies, and state deputies shall be elected, in a single round to be held not later than 75 days following the promulgation of the Constitution but not earlier than 15 November 1988, at the discretion of the Superior Electoral Court, the following rules—among others—being obeyed:

I. The periods provided for party affiliation by the candidates shall be closed 75 days prior to the date of the elections.

II. The dates of the regional party conventions to be held to decide on coalitions and choose candidates, to submit petitions for registration of the candidates selected and to carry out other legal procedures shall be set, on a special calendar, by the electoral justice system;

III. Incumbents in state or municipal posts who have not permanently withdrawn from them by 75 days prior to the date of the elections provided for in this paragraph are ineligible;

IV. The current regional boards of directors of the political parties in the State of Goias are retained; the national executive committees are authorized to appoint provisional committees in the State of Tocantins under such terms and for such purposes as provided in law.

Paragraph 4. The terms of office of the governor, lieutenant governor, federal deputies, and state deputies elected pursuant to the previous Paragraph shall end concomitantly with those of the other units of the Federation; the term of office of the senator elected with the fewest votes shall end on that same occasion, and the terms of the other two at the same time as the terms of the senators elected in 1986 in the other States.

Paragraph 5. The state Constituent Assembly shall be installed on the 46th day following the election of its members, but not earlier than 1 January 1989, under the chairmanship of the president of the Regional Electoral Court of the State of Goias, and shall on that same date administer the oath of office to the governor-elect and the lieutenant governor-elect.

Paragraph 6. The legal rules that governed the division of the State of Mato Grosso apply to the creation and installation of the State of Tocantins insofar as appropriate, with due regard for the provision in Article 234 of the Constitution.

Paragraph 7. The State of Goias is hereby released from the debts and charges resulting from undertakings in the territory of the new State and the Union is authorized to assume said debts, at its discretion.

Article 14.

The federal Territories of Roraima and Amapa are hereby transformed into Federated States, and their present geographic boundaries are maintained.

Paragraph 1. The installation of these States shall take place with the investiture of the governors elected in 1990.

Paragraph 2. The rules and criteria followed during the creation of the State of Rondonia shall apply to the transformation and installation of the States of Roraima and Amapa, the provision in the Constitution and in this Act being respected.

Paragraph 3. The President of the Republic shall, not later than 45 days following the promulgation of the Constitution, forward for consideration by the Federal Senate the names of the governors of the States of Roraima and Amapa who shall perform the duties of the Executive Branches until the new States are installed with the investiture of the governors-elect.

Paragraph 4. Until such time as the transformation into States pursuant to this Article actually occurs, the federal Territories of Roraima and Amapa shall benefit from the transfer of funds provided for in Articles 159(I)(a) of the Constitution and 34, Paragraph 2(II) of this Act.

Article 15.

The Federal Territory of Fernando de Noronha is hereby abolished, and its area reincorporated into the State of Pernambuco.

Article 16.

Until such time as the provision in Article 32, Paragraph 2, of the Constitution is implemented, the President of the Republic is authorized, with the approval of the Federal Senate, to nominate the governor and lieutenant governor of the Federal District.

Paragraph 1. The authority of the Legislative Chamber of the Federal District shall, until such time as it is installed, be exercised by the Federal Senate.

Paragraph 2. Monitoring of the accounts, finances, budgets, operations, and property of the Federal District, until such time as its Legislative Chamber is installed, shall be performed by the Federal Senate through an external control mechanism with assistance from the Tribunal of Accounts of the Federal District, the provision in Article 72 of the Constitution being observed.

Paragraph 3. Included among the assets of the Federal District are those that may be assigned it by the Union pursuant to law.

Article 17.

The earnings, remuneration, benefits, and additional payments, as well as the retirement pensions that are being received in a manner that does not conform to the Constitution shall be immediately reduced to the limits deriving therefrom; in such cases, no allegation of vested right shall be considered, and the drawing of excess amounts for any reason shall not be permitted.

Paragraph 1. The right to perform the duties of two positions or jobs that can be filled only by physicians and are being performed by a military physician in the direct or indirect public administration is assured.

Paragraph 2. The right to perform the duties of two positions or jobs that can be filled only by health professionals and are being performed in the direct or indirect public administration is assured.

Article 18.

The legal effects of any legislative or administrative act drawn up after the installation of the National Constituent Assembly that has as its object the granting of tenure to a public servant hired through means other than a public competition by the direct or indirect administration, including the foundations instituted and maintained by the government, are hereby extinguished.

Article 19.

Those civilian public servants of the Union, the States, the Federal District, the Municipalities, of the direct administration, the autonomous entities, and the public foundations who have been serving continuously for at least 5 years as of the date of promulgation of the Constitution and who were not hired in the manner regulated in Article 37 of the Constitution are hereby considered to have tenure in the public service.

Paragraph 1. The length of service of the civil servants mentioned in this article shall be counted as a credential when they apply for permanent status through a competition, pursuant to law.

Paragraph 2. The provision in this Article does not apply to those who occupy positions, functions, and jobs of confidence or on a temporary basis, nor to those whom

the law declares may freely be dismissed; their time in service shall not be computed for the purposes of the main provision of this article, unless such person is already a public servant.

Paragraph 3. The provision in this Article does not apply to professors at the university level, pursuant to law.

Article 20.

Within 180 days, steps shall be taken to review the rights of the inactive public servants and pensioners and to update the level of the payments and pensions due them, in order to bring them into harmony with the provisions of the Constitution.

Article 21.

Judges of law who were invested in the judgeship for a limited length of time, were hired by public competition based on examinations and credentials, and are in service on the date of promulgation of the Constitution hereby acquire tenure—the probationary period being observed—and shall henceforth be part of a personnel class that will eventually be abolished; the jurisdictions, prerogatives, and restrictions in the legislation to which they had been subject are to be maintained, except those inherent in the transitory nature of their investiture.

Sole Paragraph. The retirement of the judges that are the subject of this article shall be regulated by the rules established for the other state judges.

Article 22.

The public defenders who were invested in their functions as of the date of installation of the National Constituent Assembly are assured the right to opt for career status, with observance of the guarantees and prohibitions for which provision is made in Article 134, sole paragraph, of the Constitution.

Article 23.

Until such time as the regulations of Article 21 (XVI) of the Constitution are published, those who now occupy the post of federal censor shall continue performing the duties compatible therewith in the Federal Police Department, constitutional provisions being observed.

Sole Paragraph. Said law shall provide for the utilization, in other government positions, of the persons serving as federal censors, pursuant to the terms of this article.

Article 24.

The Union, the States, the Federal District, and the Municipalities shall, within 18 months of the promulgation of the Constitution, publish laws that set criteria for bringing their personnel staffing groups into harmony with the provision in Article 39 of the Constitution and for the resulting administrative reform.

Article 25.

All legal provisions that attribute or delegate to a body of the Executive Branch an authority which the Constitution confers on the National Congress are revoked beginning 180 days after the promulgation of the Constitution, which deadline may be extended by law, especially those touching on the following:

I. Rule-making actions;

II. Allocation or transfer of funds of any type.

Paragraph 1. The effects of decree-laws that are in process at the National Congress and on which the Congress had not yet ruled on the date of the promulgation of the Constitution shall be regulated in the following manner:

I. If published on or before 2 September 1988, they shall be considered by the National Congress within not more than 180 days from the promulgation of the Constitution, not counting the period of congressional recess.

II. If the deadline referred to in the previous subsection of this article expires without such consideration having occurred, said decree-laws shall be deemed to have been rejected;

III. In the events defined in (I) and (II) hereof, the acts committed during the time when the respective decree-laws were in force shall be fully valid, and the National Congress may, if necessary, legislate concerning the lingering effects thereof.

Paragraph 2. Decree-laws published between 3 September 1988 and the date of promulgation of the Constitution shall be converted to provisional measures on such date and the rules in Article 62, sole paragraph, shall apply to them.

Article 26.

Within 1 year from the promulgation of the Constitution, the National Congress shall conduct, through a joint commission, an analytical and expert examination of the acts and events that generated the external indebtedness of Brazil.

Paragraph 1. The commission shall have the same legal authority as a congressional investigatory committee for purposes of requisitioning services and calling meetings, and shall conduct its business with the assistance of the Tribunal of Accounts of the Union.

Paragraph 2. In the event irregularities are found, the National Congress may suggest to the Executive Branch that the act be declared null and void and shall forward the proceedings to the Federal Office of the Government Attorney, which shall, within 60 days, formalize an appropriate action.

Article 27.

The Superior Court of Justice shall be installed under the presidency of the Federal Supreme Court.

Paragraph 1. Until such time as the Superior Court of Justice is installed, the Federal Supreme Court shall exercise the prerogatives and jurisdictions defined in the preceding constitutional order.

Paragraph 2. The initial composition of the Superior Court of Justice shall be achieved as follows:

I. By utilizing the ministers on the Federal Court of Appeals;

II. By appointing a sufficient number of ministers to achieve the number required by the Constitution.

Paragraph 3. For the purposes of the provision in the Constitution, the present ministers of the Federal Court of Appeals shall be considered as belonging to the personnel class from which they came when they were appointed.

Paragraph 4. After the Court has been installed, the ministers who had retired from the Federal Court of Appeals shall automatically become retired ministers of the Superior Court of Justice.

Paragraph 5. The ministers to which Paragraph 2(II) refers shall be nominated on a list of three names prepared by the Federal Court of Appeals, the provision in Article 104, sole paragraph, of the Constitution being observed.

Paragraph 6. Five Federal Regional Courts are hereby created, and shall be installed within 6 months of the promulgation of the Constitution; their geographical jurisdiction and seats shall be as determined by the Federal Court of Appeals, taking into account the number of proceedings and the geographical locations thereof.

Paragraph 7. Until such time as the Federal Regional Courts are installed, the Federal Court of Appeals shall exercise the jurisdiction attributed thereto throughout the nation's territory and shall have authority to arrange for their installation and nominate candidates for all the positions on the initial composition of these courts, using lists of three names each on which federal judges from any region may appear, with due regard for the provision of Paragraph 9.

Paragraph 8. Once the Constitution has been promulgated, filling of vacancies among the ministers of the Federal Court of Appeals is prohibited.

Paragraph 9. In the event there is no federal judge who has the minimum time in service called for in Article 101(II) of the Constitution, a judge who has less than 5 years of service in the position may be considered for promotion.

Paragraph 10. The federal justice system has jurisdiction to hear suits brought in that system up to the date of promulgation of the Constitution; the Federal Regional Courts and the Superior Court of Justice have jurisdiction to hear suits brought to rescind decisions handed down up to that date by the federal justice system, including those whose subject matter has passed to the jurisdiction of another branch of the Judiciary.

Article 28.

The federal judges discussed in Article 123, Paragraph 2, of the Constitution of 1967, as amended by Constitutional Amendment No 7 of 1977, are hereby invested as sitting judges of trial courts in the judiciary section to which they were appointed or designated; if there are no vacancies, then the existing trial courts shall be subdivided.

Sole Paragraph. For the purposes of promotion on the basis of seniority, the length of service of those judges shall be computed from the date on which they took office.

Article 29.

Until such time as the complementary laws are enacted relating to the Office of Government Attorney and the Office of the General Counsel of the Union, the Federal Office of Government Attorney, the Office of the Attorney General of the National Treasury, the legal advisory bodies of the ministries, the prosecutors' offices and the legal departments of federal autonomous entities that have their own representation, and the members of the prosecutors' offices of the public foundation universities shall continue to function in the area of their respective prerogatives.

Paragraph 1. The President of the Republic shall, within 120 days, forward to the National Congress a complementary bill that provides for the organization and functioning of the Office of the General Counsel of the Union.

Paragraph 2. Those who are now serving as prosecutors of the Republic shall be given an opportunity pursuant to complementary law to make an irrevocable choice between the career service of the Federal Office of the Government Attorney and that of the Office of the General Counsel of the Union.

Paragraph 3. A member of the Office of Government Attorney who was hired prior to the promulgation of the Constitution may opt to be governed by the previous regime as regards guarantees and benefits, as long as the legal status on the date of such promulgation is observed as regards the prohibitions.

Paragraph 4. The present members of the supplementary staff of the Offices of the Government Attorneys for the labor and military sectors who have acquired tenure in those functions shall go on to join the staff of the respective career service.

Paragraph 5. It is the province of the current Attorney General of the National Treasury, acting directly or by delegation—which may be to the State Office of the Government Attorney—to represent the Union in proceedings of a tax nature in the area of its respective jurisdiction, until the complementary laws provided for in this article have been promulgated.

Article 30.

The legislation that creates the justice of the peace system shall maintain the present justices of the peace until the new ones take office, shall assure them of the same rights and prerogatives conferred on the new justices, and shall schedule a date for the election for which provision is made in Article 96(II) of the Constitution.

Article 31.

The clerkships in the judicial structure, as defined in law, shall be incorporated into the government structure, the rights of the present holders of such posts being respected.

Article 32.

The provision in Article 236 does not apply to the notarial and registry services that have already been made part of the official apparatus by the Government, the rights of their employees being respected.

Article 33.

With the exception of debts that are in the nature of support payments, the value of the judicial requisitions pending payment on the date the Constitution is promulgated, including remainders for interest charges and adjustments for changing currency values, may be paid in legal tender, with adjustments to bring the values up to date, in equal, annual and successive installments over a period of 8 years starting on 1 July 1989, by decision published by the Executive Branch not later than 180 days from the date of promulgation of the Constitution.

Sole Paragraph. The debtor entities may, in order to fulfill the provision of this article, issue each year, in the exact amount of the expenditure, instruments of public indebtedness that shall not be computed for purposes of the overall limit on indebtedness.

Article 34.

The national tax system shall enter into force beginning on the first day of the fifth month following the month in which the Constitution was promulgated; until then, the system of the 1967 Constitution, as reworded by Amendment No. 1 of 1969 and subsequent changes, shall be maintained.

Paragraph 1. With the promulgation of the Constitution, Articles 148, 149, 150, 154(I), 156(III) and 159(I)(c) shall enter into force; the conflicting provisions of the 1967 Constitution and its amendments, especially of its Article 25(III) are thereby revoked.

Paragraph 2. The following determinations shall be obeyed as regards the States and Federal District Participation Funds and the Municipalities Participation Fund:

I. Beginning with the promulgation of the Constitution, the percentages shall be 18 and 20 percent, respectively, calculated on the proceeds from the collection of the taxes mentioned in Article 153(III) and (IV), the present criteria of apportionment being maintained until the complementary law referred to in Article 161(II) enters into force;

II. The percentage relative to the States and Federal District Participation Fund shall be increased by one percentage point during the 1989 fiscal year and, beginning with 1990 inclusive, at the rate of one-half point per fiscal year through 1992, so that in 1993 it attains the percentage established in Article 159(I)(a);

III. The percentage relative to the Municipalities Participation Fund shall be raised, beginning in 1989, at the rate of one-half percentage point per fiscal year until the rate established in Article 159(I)(b) is attained;

Paragraph 3. Once the Constitution has been promulgated, the Union, the States, the Federal District, and the Municipalities may publish laws necessary for the implementation of the national tax system provided for therein.

Paragraph 4. The laws published pursuant to the previous paragraph shall produce effects starting on the date the national tax system provided for in the Constitution enters into force.

Paragraph 5. Assurance is hereby given that, once the new national tax system has taken effect, the previous legislation applies insofar as it is not incompatible with the new system or with the legislation referred to in paragraphs 3 and 4 of this Article.

Paragraph 6. The provision in Article 150(III)(b) does not apply to the taxes discussed in Articles 155(I)(a) and (b) and 156 (II) and (III) until 31 December 1989; these may be assessed 30 days after publication of the law that instituted or increased them.

Paragraph 7. Until such time as determined by complementary law, the maximum rates of the municipal tax on retail sale of liquid and gaseous fuels shall not exceed 3 percent.

Paragraph 8. If, within 60 days of the promulgation of the Constitution, the complementary law necessary for the institution of the tax discussed in Article 155(I)(b) is not published, the States and the Federal District may, via formal agreement entered into pursuant to Complementary Law No 24 of 7 January 1975, set rules for regulating the subject on a provisional basis.

Paragraph 9. Until such time as complementary law makes provision on the subject, the companies that distribute electrical energy, acting as taxpayers or taxpayer substitutes, shall be deemed responsible, at the time the product is shipped from their establishments—even if consigned to another unit of the Federation—for payment of the tax on goods distribution that is assessed against electrical energy, from the production or importation stage to the final transaction; the tax shall be calculated on the price used at that time for the final transaction, and its payment to the State or the Federal District, depending on where that transaction occurs, is assured.

Paragraph 10. Assurance is hereby given that until such time as the law provided for in Article 159(I)(c), to be promulgated not later than 31 December 1989, enters into force, the funds provided for in that provision will be allocated in the following manner:

I. Six-tenths of 1 percent in the North Region, through Banco da Amazonia S.A;

II. One and eight-tenths percent in the Northeast Region, through Banco do Nordeste do Brasil S.A.;

III. Six-tenths of 1 percent in the West Central Region, through Banco do Brasil S.A.

Paragraph 11. The Development Bank of the West Central Region is hereby created, pursuant to law, in order to implement in that region the determinations of Articles 159(I)(c) and 192, Paragraph 2, of the Constitution.

Paragraph 12. The urgency provided for in Article 148(II) does not prejudice the levying of the compulsory loan that was instituted, for the benefit of Centrais Eletricas Brasileiras S.A. (Eletrobras), by Law No 4,156 of 28 November 1963 and amendments thereto.

Article 35.

The provision in Article 165, Paragraph 7, shall be fulfilled gradually over a period not to exceed 10 years and the funds shall be distributed between the macroeconomic regions on a basis proportional to their population, starting with the situation as it stood during the 1986-87 biennium.

Paragraph 1. In applying the criteria mentioned in this article, expenses relating to the following are excluded:

- I. Projects considered as priorities under the multiyear plan;
- II. National security and defense;
- III. Maintenance of the federal agencies in the Federal District;
- IV. The National Congress, the Tribunal of Accounts of the Union, and the Judicial Branch;
- V. Debt service obligations of the direct and indirect administration of the Union, including foundations instituted and maintained by the federal Government.

Paragraph 2. Until such time as the complementary law to which Article 165, Paragraph 9 (I) and (II) refers enters into force, the following rules shall be obeyed:

- I. The legislative bill for the multiyear plan that is to be in effect until the end of the first fiscal year of the subsequent presidential term of office shall be forwarded for Congressional consideration not less than 4 months prior to the end of the first fiscal year and returned for presidential sanction by the close of the legislative session;
- II. The budgetary guidelines bill shall be forwarded for consideration not less than 8 and one-half months prior to the close of the fiscal year and returned for sanction by the close of the first period of the legislative session;
- III. The budget bill for the Union shall be forwarded for consideration not less than 4 months prior to the end of the fiscal year and returned for sanction by the close of the legislative session.

Article 36.

The established funds existing on the date of the promulgation of the Constitution, except the results of fiscal exemptions that become part of private patrimony, and

funds set up in connection with national defense, shall be abolished if their continued existence is not ratified by the National Congress within 2 years.

Article 37.

Adaptation to the situation required by Article 167(III) must be made within a period of 5 years, by reducing the excess at the rate of at least one-fifth per year.

Article 38.

Until promulgation of the complementary law referred to in Article 169, the Union, the States, the Federal District, and the Municipalities may not expend more than 65 percent of the value of their respective current revenues on personnel.

Sole Paragraph. The Union, the States, the Federal District, and the Municipalities must, whenever their respective personnel spending exceeds the limits prescribed in this article, return to that limit by reducing the surplus percentage at the rate of one-fifth per year.

Article 39.

For purposes of complying with the constitutional provisions that entail changes in the expenditures and revenues of the Union following promulgation of the Constitution, the Executive Branch shall draft and the Legislative Branch consider a bill to revise the budget law that applies to the 1989 fiscal year.

Sole Paragraph. The National Congress shall vote within 12 months on the complementary law provided for in Article 161(II).

Article 40.

The Manaus Tax-Free Zone is to be maintained, with its free export and import trade area features and its tax incentives, for a period of 25 years from the promulgation of the Constitution.

Sole Paragraph. The criteria which now discipline or may in future discipline the approval of projects in the Manaus Tax-Free Zone may be modified only by federal law.

Article 41.

The Executive Branches of the Union, the States, the Federal District, and the Municipalities shall re-evaluate all the tax incentives of a sectoral nature that are now in effect and shall propose appropriate measures to their respective legislatures.

Paragraph 1. Incentives that are not confirmed by law shall be considered as revoked after 2 years have elapsed since the promulgation of the Constitution.

Paragraph 2. Such revocation shall not prejudice the rights that have already been acquired on that date as regards incentives granted upon satisfaction of specific conditions and for a definite length of time.

Paragraph 3. The incentives granted by agreements between States concluded pursuant to Article 23, Paragraph 6, of the 1967 Constitution, as reworded by Amendment No 1 of 17 October 1969, shall also be re-evaluated and reconfirmed within the periods specified in this Article.

Article 42.

During a period of 15 years the Union shall allocate the funds earmarked for irrigation projects in the following manner:

I. 20 percent to the West Central Region;

II. 50 percent to the Northeast Region, preferably to the semi-arid zones.

Article 43.

On the date of promulgation of the law which disciplines the prospecting and mining of mineral resources or deposits, or within the period of 1 year of the promulgation of the Constitution, all authorizations, concessions, and other documents that attribute mineral rights shall become void if the prospecting or mining activities are not proven to have been initiated within the legal deadlines or are inactive.

Article 44.

Brazilian companies that now hold prospecting authorizations or concessions for mining mineral resources or exploiting the potential sources of hydraulic power now in force shall have 4 years from the date of promulgation of the Constitution in which to fulfil the requirements of Article 176.

Paragraph 1. Except for provisions of national interest called for in the constitutional text, Brazilian companies shall be excused from complying with the provision in Article 176, Paragraph 1, provided that within 4 years of the date of promulgation of the Constitution they have earmarked the product of their mining and processing activities for industrialization within Brazilian territory, either at their own establishments or at an industrial company that they control or are controlled by.

Paragraph 2. Brazilian companies that hold hydraulic power concessions for use in their own industrial processes are also excused from compliance with the provision in Article 176, Paragraph 1.

Paragraph 3. The Brazilian companies referred to in Paragraph 1 may hold prospecting authorizations and mining or hydraulic power concessions only if the power and the product of the mining are used in their respective industrial processes.

Article 45.

Refineries now operating in Brazil and protected by Article 43 and operating under the terms of Article 45 of Law 2004 of 3 October 1953 are excluded from the monopoly established by Article 177(II) of the Constitution.

Sole Paragraph. Risk contracts concluded with Petroleo Brasileiro S.A. (Petrobras) for petroleum exploration and that are in force on the date of the promulgation of the Constitution are hereby exempted from the prohibition of Article 177, Paragraph 1.

Article 46.

Credits with entities that are under regimes of extrajudicial intervention or liquidation, even when such regimes are converted into bankruptcy, are subject to correction to reflect changing currency values from the date they were due until actually paid, without interruption or suspension.

Sole Paragraph. The provision in this article also applies to the following:

I. Transactions that took place after the regimes referred to in the main provision of this article were decreed;

II. The following transactions: loans, financing, refinancing, financial liquidity assistance, assignment or subrogation of credits or mortgage instruments, implementation of guarantees on deposits by the public or of purchase of outstanding obligations, including those made with monies from funds earmarked for such purposes.

III. Credits that existed prior to the promulgation of the Constitution;

IV. Credits of the entities of the public administration that existed prior to promulgation of the Constitution and not liquidated by 1 January 1988.

Article 47.

In liquidating the debts—including their subsequent renegotiations and compositions, even if adjudicated—that result from any loans made by banks or by financial institutions, no correction shall be made to reflect changing currency values, provided that the loan was granted to:

I. Entrepreneurs of microenterprises and small enterprises, or their establishments, during the period between 28 February 1986 and 28 February 1987;

II. Mini-, small-, and medium-sized rural producers during the period between 28 February 1986 and 31 December 1987, provided they pertain to rural credit.

Paragraph 1. For purposes of this Article, microenterprises are considered to be those legal entities and individual firms whose annual receipts do not exceed the equivalent of 10,000 National Treasury Bonds ["Obrigaçoes do Tesouro Nacional"] and small enterprises are considered to be those legal entities and individual firms whose annual receipts do not exceed the equivalent of 25,000 National Treasury Bonds.

Paragraph 2. The classifications of mini-, small-, and medium-sized rural producers shall be drawn in accordance with the rural credit standards in force at the time of the contract.

Paragraph 3. The exemption from the correction to reflect changing currency values to which this Article refers shall be granted only in the following cases:

I. When the initial debt, plus legal interest rates and court fees, is liquidated within 90 days of the promulgation of the Constitution;

II. When the application of the funds does not violate the purpose of the financing, the burden of proof of this resting with the lending institution;

III. When the lending institution fails to demonstrate that the borrower has the means to pay off his debt without recourse to his business establishment, residence dwelling, and his instruments of work and production;

IV. When the initial financing did not exceed the equivalent of 5,000 National Treasury Bonds;

V. When the beneficiary does not own more than five rural modules.

Paragraph 4. The benefits that are the subject of this article do not extend to debts that have already been paid or to debtors who are members of the Constituent Assembly.

Paragraph 5. In the case of transactions having maturity dates subsequent to the deadline for liquidating the debt and if the borrower is interested in doing so, the banks and financial institutions may arrange, through a separate instrument, to amend the originally contracted conditions so as to make the transaction eligible for this benefit.

Paragraph 6. The granting of this benefit by private commercial banks shall in no event entail an onus to the Government, not even through refinancing and on-lending of funds by the Central Bank.

Paragraph 7. In the event funds are passed along to official financial agents or credit cooperatives, the onus shall fall on the original source of the funds.

Article 48.

The National Congress shall, within 120 days of the promulgation of the Constitution, draft a consumer protection code.

Article 49.

The law shall make provision for the institution of emphyteusis in urban real estate and in the event of extinction thereof, the tenants shall be authorized to redeem the emphyteusis by acquiring direct ownership of the property in accordance with the provisions of the respective contracts.

Paragraph 1. In the absence of a contractual clause, the criteria and bases now in force in the Union's special real estate legislation shall be adopted.

Paragraph 2. The rights of the current enrolled occupants are assured by the use of another type of contract.

Paragraph 3. Emphyteusis shall continue being applied to the marine lands and their accretions that are situated in the security strip that begins at the maritime shore.

Paragraph 4. After redemption, the former holder of direct ownership shall entrust all the documentation pertaining to the property to the appropriate real estate registry office within a period of 90 days, under penalty of being held liable.

Article 50.

Agricultural law to be promulgated within the period of 1 year shall provide, pursuant to the Constitution, concerning the objectives and instruments of agricultural policy, priorities, crop planning, marketing, domestic supply, the foreign markets, and the institution of rural real estate credit.

Article 51.

The National Congress, acting through a joint committee, during the 3 year period following promulgation of the Constitution, shall review all the donations, sales, and grants of public lands having an area in excess of 3,000 hectares that were consummated during the period 1 January 1962 through 31 December 1987.

Paragraph 1. Concerning sales, the review shall be made only to determine the legality of the transaction.

Paragraph 2. In the case of grants and donations, the review shall be made on the basis of criteria of legality, as well as desirability from the point of view of the public interest.

Paragraph 3. In the instances for which provision is made in the previous paragraphs, when illegality is proven or when it is in the public interest to do so, the lands shall revert to the patrimony of the Union, the States, the Federal District, or the Municipalities.

Article 52.

Until such time as the conditions to which Article 192(III) refers are established, the following are prohibited:

I. The installation in Brazil of new branches of foreign financial institutions domiciled abroad;

II. Increase in the percentage of participation in the capital of financial institutions headquartered in Brazil held by individuals or legal entities resident or domiciled abroad.

Sole Paragraph. The prohibition to which this Article refers does not apply to authorizations that derive from international accords of reciprocity or of interest to the Brazilian government.

Article 53.

Veterans who actually participated in wartime operations during the Second World War pursuant to Law No 5315 of 12 September 1967 shall be assured the following rights:

I. Utilization in the public service, with tenure, without being required to participate in a competition;

II. Special pension corresponding to the pension made available to a lieutenant in the Armed Forces; this pension may be applied for at any time, but may not received in combination with any earnings received from the public coffers, except social security benefits, the right of option being reserved;

III. In event of death, a pension to the veteran's widow, companion, or dependent, proportionally and in a value equal to that of (II) above;

IV. Free medical, hospital, and educational assistance, extensive to the dependents thereof;

V. Retirement at full pay after 25 years of actual service under any legal regimen;

VI. Priority in purchasing a personal residence, for those who do not already own one, or for widows or companions of veterans.

Sole Paragraph. The concession of the special pension of (II) above replaces, for all legal effects, any other pension already granted to the veteran.

Article 54.

The rubber-gatherers who were recruited pursuant to Decree-Law No 5813 of 14 September 1943 and are protected by Decree-Law No 9882 of 16 September 1946 shall receive, when in need thereof, a lifetime pension in an amount equivalent to two minimum wages every month.

Paragraph 1. The benefit is extended to rubber-gatherers who, responding to the appeal by the Brazilian Government, contributed to the war effort by working in rubber production in the Amazon region during World War II.

Paragraph 2. The benefits established in this Article may be transferred to dependents who are recognized as being needy.

Paragraph 3. This benefit shall be granted pursuant to a law to be introduced by the Executive Branch within 150 days of the promulgation of the Constitution.

Article 55.

Until such time as the budgetary guidelines law is approved, at least 30 percent of the social security budget, unemployment insurance being excluded, shall be earmarked for the health sector.

Article 56.

Until such time as the law makes provision concerning Article 195(I), the collection resulting from at least 5/ of the 6/10 of 1 percent that corresponds to the tax rate discussed in Decree-Law No 1940 of 25 May 1982 as modified by Decree-Law 2049 of 1 August 1983, by Decree No 91236 of 8 May 1985, and by Law No 7611 of 8 July 1987, shall become part of the social security revenues except—in fiscal year 1988 only—the commitments assumed with programs and projects in progress.

Article 57.

Social security contribution debts owed by the States and the Municipalities as of 30 June 1988 shall be liquidated, after correction to reflect changing currency values, in 120 monthly installments on which interest charges and fines shall be waived, provided that the debtor entities petition for such installment arrangements and initiate payment within 180 days of the promulgation of the Constitution.

Paragraph 1. The amount to be paid in each of the first 2 years shall not be less than 5 percent of the total of the consolidated and updated debt; the remainder may be divided among monthly installments of equal value.

Paragraph 2. Liquidation may include payments in the form of assignment of assets and rendering of services, pursuant to Law No 7578 of 23 December 1986.

Paragraph 3. To guarantee compliance with the installment payment arrangement, the States and the Municipalities shall consign the appropriations necessary to the payment of their debts every year in their respective budgets.

Paragraph 4. In the event of noncompliance with any of the conditions established for concession of the installment payment arrangement, the debt shall be considered as due and payable in its entirety and default interest shall be assessed against it; in such event, a portion of the monies corresponding to the Participation Funds earmarked for the debtor States and Municipalities shall be blocked and passed on to the social security system for payment of their debts.

Article 58.

The amounts of the benefits that are paid on a continued basis and maintained by the social security system on the date of promulgation of the Constitution shall be reviewed in order that the purchasing power thereof may be restored, as expressed in number of minimum monthly wages to which they were equivalent on the date of their granting; this criterion for updating these values shall be obeyed until the cost defrayal plan and benefits referred to in Article 59 hereof has been established.

Sole Paragraph. The monthly payments of benefits that were updated in accordance with this article shall be due and payable beginning with the seventh month from the promulgation of the Constitution.

Article 59.

Legislative bills relating to the structure of social security and the plans for defraying the cost thereof and paying the benefits shall be submitted to the National Congress within 6 months of the promulgation of the Constitution, and the Congress shall have 6 months in which to consider them.

Sole Paragraph. After approval by the National Congress, the plans shall be implemented gradually during the subsequent 18 months.

Article 60.

During the first 10 years of the promulgation of the Constitution, the Government shall exert efforts, by mobilizing all the organized sectors of society and by investing at least 50 percent of the funds to which Article 212 of the Constitution refers, to eliminate illiteracy and provide elementary education on a universal basis.

Sole Paragraph. During the same interval, the public universities shall decentralize their activities so as to extend their units of higher education to cities of lower population density.

Article 61.

The educational entities to which Article 213 refers, as well as the educational and research foundations whose creation was authorized by law, that satisfy the requirements of subsections I and II of the referenced article and that have received public funding during the past 3 years, may continue to receive them except as otherwise provided by law.

Article 62.

The law shall create a National Service for Rural Apprenticeship (SENAR) along the lines of the legislation enacted relative to the National Service for Industrial Apprenticeship (SENAI) and the National Service for Commercial Apprenticeship (SENAC), without prejudice to the prerogatives of the public agencies that are acting in the area.

Article 63.

A commission composed of nine members, three from the Legislative Branch, three from the Judicial Branch, and three from the Executive Branch, is hereby created to make arrangements for commemoration of the centennial of the proclamation of the Republic and of the promulgation of Brazil's first republican Constitution; this body may, at its discretion, divide into as many subcommittees as may be necessary.

Sole Paragraph. In performing its duties, the above commission shall promote studies, debates, and evaluations of the political, social, economic, and cultural evolution of Brazil and may coordinate with state and municipal governments and with public and private institutions that wish to participate in the events.

Article 64.

The National Printing Office and other graphic arts facilities of the Union, the States, the Federal District, and the Municipalities, the direct or indirect administration—including foundations instituted and maintained by the Government—shall arrange to publish an economical edition of the full text of the Constitution which shall be made available free of charge to schools and to notary offices, unions, military bases, churches, and other representative community institutions so that each Brazilian citizen may receive a copy of the Constitution of Brazil from the government.

Article 65.

The Legislative Branch shall, within 12 months, regulate Article 220, Paragraph 4.

Article 66.

Public service telecommunications concessions that are now in force shall be maintained, pursuant to law.

Article 67.

The Union shall conclude the delineation of the boundaries of the Indian lands within 5 years of the promulgation of the Constitution.

Article 68.

Permanent ownership by the remnants of "quilombo" communities that are occupying their lands is hereby recognized, and the State shall issue them the titles thereto.

Article 69.

The States shall be permitted to maintain legal advisory offices separate from their Offices of Attorneys General or Offices of General Counsel provided that, on the date of promulgation of the Constitution, they already possess separate bodies that perform such functions.

Article 70.

The present spheres of jurisdiction of the state courts shall be maintained until such time as these are defined in the state Constitutions, pursuant to Article 125, Paragraph 1, of the Constitution.

Done at Brasilia, in the Committee Room of the Final Drafting Committee, on 20 September 1988.

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